U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

SEP 9 1991

John B. Farese, Esq.
P. O. Box 98
Ashland, Mississippi 38603

Dear Mr. Farese:

This refers to the 1991 redistricting plan for board of supervisors districts and the realignment of voting precincts, including the establishment of three additional precincts and the polling places therefor, in Benton County, Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your final response to our June 14, 1991, request for additional information on July 11, 1991.

We have considered carefully the information you have provided, as well as 1990 Census data and information from other interested persons. At the outset, we note that even though the county's total population has decreased since 1980, the black population actually increased so that the black proportion of the population has increased from 37.5 to 39.4 percent. Under the existing plan, two districts have black voting age majorities. Yet blacks have not been able to elect candidates of their choice to the board of supervisors, a circumstance that appears to be attributable, at least in part, to a pattern of racially polarized voting in county elections.

The county's proposed plan provides for two black majority districts in total population, but only one has a black voting age population and, in both districts, the county's proposal would reduce the black voting-age proportion. While it appears that deviations in some districts in the existing plan required

population shifts, one of the existing black majority districts (District 1) is underpopulated by less than one percent. Nevertheless, the county seeks to add white population to this district, thereby reducing the black voting age to less than 50 percent. The other black majority district (District 2), which has approximately a 63 percent black voting age proportion under the existing plan and is overpopulated by almost 14 percent, is adjusted under the county's proposal by removing primarily black, rather than white, population, with the result that the district's black voting age proportion of the district is reduced and an area of cohesive black population is unnecessarily divided.

Thus, the county's particular boundary line choices seem calculated to divide population concentrations in a manner that will permit black voters an opportunity at best to elect a candidate of their choice in only one supervisor's district, thereby submerging cohesive black voting potential in white majority districts. Further indication that this was the intended effect is found in the configuration of District 3 which stretches from the eastern to the western borders of the county in a relatively narrow band that seems unnecessarily to divide both white and black population concentrations in order to avoid districts with higher black voting age proportions.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plan for board of supervisor districts.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1991 redistricting plan for board of supervisor districts continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

The realignment of voting precincts and the precinct and polling place changes are directly related to the proposed 1991 redistricting plan for the board of supervisors. Therefore, the Attorney General will make no determination at this time with regard to those changes. See 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, and in light of the impending county elections, please inform us of the action Benton County plans to take concerning these matters. If you have any questions, you should call Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

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Office of the Assistant Attorney General *Washington, D.C. 20530*

DEC 16 1991

John B. Farese, Esq.
P. O. Box 98
Ashland, Mississippi 38603

Dear Mr. Farese:

This refers to your request that the Attorney General reconsider the September 9, 1991, objection, under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1991 redistricting plan for the board of supervisors districts in Benton County, Mississippi. We received your letter on October 15, 1991; supplemental information was received on November 18 and 25, 1991.

We have considered carefully the information you have provided, which primarily concerns the results of the 1991 elections conducted under the existing districting plan for board of supervisors. The county maintains that the election of a black candidate to the District 1 supervisor's seat establishes that voting is not polarized along racial lines and, therefore, that the proposed plan is racially fair.

Court decisions in this area teach us that "the success of a minority candidate in a particular election does not necessarily prove that the district did not experience [racially] polarized voting in that election," particularly where, as here, "special circumstances . . . may explain minority electoral success in a polarized contest." Gingles v. Thornburg, 478 U.S. 30, 57 (1986) (footnote omitted). This is especially true when the black success follows on the heels of minority voting rights litigation or enforcement, such as our Section 5 objection. See id. at 76-77 (citing Zimmer v. McKeithen, 485 F.2d 1297, 1307 (1973)).

In the instant matter, our analysis indicates that, in spite of the black candidate's success, voting in the District 1 primary and general elections was significantly polarized along racial lines. For example, in the district's 95 percent white voting precinct (one of three precincts in the district), the black candidate received less than 10 percent of all votes in each of the three 1991 elections involving the District 1 contest. In addition, it appears that the margin of victory for the black candidate was due largely to vote-splitting by white voters among white candidates in the primary and low white turnout, especially in the general election. Furthermore, even if it is true that District 1 voters did not cast their ballots along racial lines in the 1991 elections, "in a district where elections are shown usually to be polarized, the fact that racially polarized voting is not present in one or a few individual elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting." Id. at 57.

As noted in our earlier letter, our objection to the overall 1991 redistricting plan was based in part on the county's choices with regard to District 1. Although the district was within one percent of the ideal population and, thus, did not need to be reapportioned or redistricted, the county's proposal nevertheless moves white population into District 1, thereby reducing an existing majority black voting age proportion to less than 50 percent. On reconsideration, the county has provided no nonracial explanation or justification for this scheme. In view of the black candidate's slight margin of victory in existing District 1, we can find no basis for concluding that the unrequired reduction in the black voting age proportion of this district was not calculated to minimize black voting strength.

In addition, we objected to the proposed 1991 plan because of the choices regarding black-majority District 2. The level of overpopulation in that district required that some residents be removed but the county's proposal removed mainly black population, with the result that this district's black voting age proportion also was reduced and an area of cohesive black population was unnecessarily divided.

Thus, in interposing the objection, we concluded that the county's particular boundary line choices in the 1991 plan seemed calculated to divide population concentrations in a manner that submerged cohesive black voting potential in white-majority districts. An additional example of this was the treatment of District 3, the boundaries of which the board of supervisors had configured so as to span the entire width of the county from east to west in a relatively narrow band that unnecessarily divided both black and white population concentrations in order, it appeared, to avoid districts with higher black voting age proportions.

In none of these areas has the county addressed the overall configuration of the 1991 plan or the particular choices that led to our objection. The county has offered no additional justification, explanation, legal argument, or factual information, except for the 1991 election returns and its conclusion that they demonstrate an absence of racially polarized voting.

In light of these considerations, I remain unable to conclude that Benton County has carried its burden of showing that the submitted redistricting plan has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the 1991 redistricting plan for board of supervisors districts.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. We remind you, however, that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change is legally unenforceable. See Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Benton County plans to take concerning these matters. If you have any questions, you should call Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division