



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Donald G. Kruger, Esq.
Board Attorney
Jefferson Davis County Board
of Supervisors
412 North Columbia Avenue
Prentiss, Mississippi 39474

SEP 13 1991

Dear Mr. Kruger:

This refers to the supervisor redistricting plan and the realignment of voting precincts for Jefferson Davis 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 response to our request for additional information on August 2 and September 11, 1991.

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). With regard to effect, the burden is to demonstrate that the change would not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise," Beer v. United States, 425 U.S. 130, 141 (1976). Here, since the existing supervisor boundary lines have been precleared, the benchmark for judging whether retrogression has occurred is the existing boundaries viewed from the electoral and demographic circumstances that exist today (i.e., 1990 Census data). 28 C.F.R. 51.54(b)(2)

In both the existing and the proposed supervisor plans, there are two districts in which blacks constitute a majority of the voting age population, Districts 4 and 5. While the county has not proposed any alterations to District 5, the proposed plan would reduce the black population percentage in District 4 by about three percentage points, from 69.7 percent (according to the 1990 Census) to 66.6 percent. Given the apparent pattern of

racially polarized voting in county elections and the recent history of close elections involving black candidates in existing Districts 3 and 4, such a reduction would appear to be significant. In accomplishing this result, the boundary lines of the county's plan seem unnecessarily to have fragmented black population concentrations (between Districts 1 and 4) and, in addition, to have manipulated population in a way calculated to minimize black voting strength (i.e., in order to rectify the overpopulation in District 3, black residents were moved from District 3 into predominately white District 2 and an equal number of white residents were moved into predominately black District 4). We also note that the county states that it sought to avoid reducing the black population percentages in the existing black majority districts; however, the county appears to have incorrectly used the 1980 Census figures to evaluate black voting strength in those districts, figures which do not reflect current circumstances.

It further appears that there are a number of readily available redistricting options which would permit the county to avoid fragmentation and correct the existing malapportionment without reducing the black population percentage in District 4, while also meeting the county's goal of not making any substantial changes to the existing plan. Indeed, we understand that the county was presented with an alternative redistricting approach which sought to minimize the fragmentation and also proposed correcting the overpopulation in District 3, which has a bare black population majority, by shifting white population from that district to white majority District 2 in a manner which would have more effectively recognized black voting strength in District 3. The county has not presented any valid nonracial explanation for rejecting such an alternative approach.

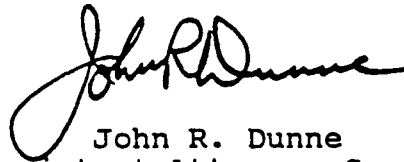
Therefore, in light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the supervisor redistricting plan.

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 supervisor redistricting plan continues to be legally unenforceable and may not be implemented in any election, including the September 17, 1991, primary. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

With respect to the submitted precinct realignment, the Attorney General will make no determination at this time since it is directly related to the objected-to change. 28 C.F.R. 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 Jefferson Davis County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Dunne". The signature is written in a cursive style with a large initial "J" and "D".

John R. Dunne
Assistant Attorney General
Civil Rights Division