



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 27, 1992

George P. Cossar, Jr., Esq.
P. O. Box 50
Charleston, Mississippi 38921

Dear Mr. Cossar:

This refers to the 1991 redistricting plan for the board of supervisors and related precinct changes for Tallahatchie 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 October 11, 1991, request for additional information on February 25, 1992.

We have considered carefully the information you have provided, as well as Census data and information received from other interested parties. Black persons constitute 58 percent of Tallahatchie County's total population and 52 percent of the county's voting age population, according to the 1990 Census. In June 1991, the board of supervisors adopted a redistricting plan in which blacks comprised at least 65 percent of the voting age population in three of the five districts. The board, however, decided not to seek Section 5 preclearance for that plan. Instead, in July 1991, the board replaced that plan with the plan now under Section 5 review. The submitted plan retains two districts with substantial majority black voting age populations; the major difference between the submitted plan and the initial plan is the black share of the voting age population in District 2, which was reduced from 67 percent to 56 percent.

We have examined the board's decision to lower the black proportion in District 2 in the context of following factors: no black person has been elected to the board of supervisors; racially polarized voting appears to prevail in elections in the county; a prominent black candidate sought to qualify for supervisor in District 2 after the board adopted the initial

plan; contiguous black population in and around the City of Charleston appears unnecessarily split between Districts 1 and 2 in the submitted plan; and the decision to adopt the submitted plan appears to have been made in executive session, without public discussion.

The board explains that it revised its redistricting plan because it initially misapprehended the proportion of blacks in District 2 under the existing plan. We note, however, that the correction did not affect the data for the initially adopted plan. Nor does it provide an adequate justification, in light of the factors identified above, for the board's decision to reduce the black share of the voting age population in District 2 and fragment black population concentrations in Charleston, and thereby make it more difficult for black voters to elect a candidate of their choice in District 2.

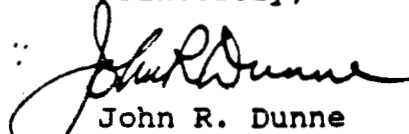
In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plan for the Tallahatchie County Board of Supervisors.

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 redistricting plan 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 continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

The voting precinct changes proposed in conjunction with the 1991 redistricting plan are directly related to the proposed plan. Therefore, the Attorney General is unable to make any determination at this time with regard to the proposed precinct 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, please inform us of the action Tallahatchie County plans to take concerning this matter. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division

March 1, 1993

Amy D. Whitten, Esq.
Tollison, Austin & Twiford
P. O. Box 1216
Oxford, Mississippi 38655

Dear Ms. Whitten:

This refers to your request that the Attorney General reconsider the April 27, 1992, 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 of Tallahatchie County, Mississippi. We received your letter on December 29, 1992, and received supplemental information on January 29, 1993.

Your request, made eight months after our objection, is not based on changed circumstances, but on disagreement with the bases for our objection. In light of your arguments, we re-examined each of the matters in issue, but found, for reasons discussed below, that our prior determinations were fully warranted.

A significant ground for our conclusion that the county had not met its burden to show the absence of a racially discriminatory purpose was the pretextual nature of the board's reasons for rejecting an alternative that provided a fairer opportunity for blacks to elect candidates of their choice, i.e., the plan that the board initially adopted in June 1991. According to your letter, errors concerning population data meant that the initial plan "does not and cannot be made to exist in fact." However, as noted in our objection letter, the data errors that were significant did not relate to the plan adopted in June 1991, but to the existing (1986) plan. In addition, while there were minor, technical errors in the June 1991 plan, those errors were easily corrected. Indeed, in July 1991, the board's demographer made the corrections and, as one alternative, prepared a plan that included three districts at least 68 percent black in voting age population.

The following discussion deals with the county's contentions regarding five factors set forth in our objection letter.

1. In response to our statement that no black has been elected to the board of supervisors in Tallahatchie County, the county states that "black persons have been elected to other county posts involving the same districts." Of course, we were aware of that fact when we made our determination, but experience in Tallahatchie County, as well as other Mississippi counties, indicates that factors applicable to contests for supervisor can differ from those applicable to contests for different and less significant offices.

2. The county disputes our statement that racially polarized voting appears to prevail in the county. Our analysis of numerous interracial election contests that occurred during the period, 1986-1991, reveals that, with few exceptions, there has been a high degree of racial polarization in Tallahatchie County elections, and we do not find your arguments to the contrary persuasive.

3. The county asserts that it is not pertinent that, after adoption of the initial plan (in June 1991), a prominent black person qualified to run for District 2 supervisor in the 1991 primary. For example, the county states that, both before and after adoption of the initial plan, District 2 was majority-black. Contrary to the county's argument as to the racial makeup of District 2, there was a major difference between the plan adopted in June 1991 and either the existing plan or the objected-to plan. Under the initially adopted plan, blacks constituted 67.4 percent of the voting age population of District 2; the comparable figures under the existing plan and the objected-to plan were 52.2 percent and 56.5 percent respectively. Further, our information indicates that the filing by the black candidate in District 2 was a factor affecting the board's decision to replace the initially adopted plan.

4. As to the splitting of black population between Districts 1 and 2, your letter states that there are two "widely separated" black areas in and around Charleston--the northeast and the southwest--and that those two areas are properly divided in the districting plan. The point stated in our objection letter relates solely to the northeast, where the objected-to plan divides a heavily black area between Districts 1 and 2. Neither the original submission nor the reconsideration request provides justification for that fragmentation.

5. The county takes issue with our statement that the decision to adopt the submitted plan "appears to have been made in executive session." Prior to the objection, we reviewed a videotape of the meeting in question, the board's July 5, 1991, meeting. Our review indicated that the board interrupted the open meeting in order to hold an executive session and then, just after resuming the open meeting, voted to adopt the submitted plan.

In light of these considerations, I remain unable to conclude that Tallahatchie County has carried its burden of showing that the submitted change has no discriminatory purpose. 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.

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 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 also 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 Tallahatchie County plans to take concerning this matter. If you have any questions, you should call Richard B. Jerome (202-514-8696), an attorney in the Voting Section.

Because the county's redistricting is at issue in Gardner v. Tallahatchie County, C.A. No. 91-CV-146 (N.D. Miss.), we are sending a copy of this letter to the court and counsel of record in that case.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Neal B. Biggers, Jr.
United States District Judge

S. Allan Alexander, Esq.
C. Victor McTeer, Esq.
George P. Cossar, Jr., Esq.