



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 21, 1992

Tommy M. McWilliams, Esq.  
Townsend, McWilliams & Holladay  
P. O. Box 107  
Indianola, Mississippi 38751

Dear Mr. McWilliams:

This refers to the 1992 supervisor redistricting plan, the realignment of voting precincts, two polling place changes, and the establishment of an additional precinct in Sunflower 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 submission on March 23, 1992.

We have carefully considered the information you have provided, as well as comments from other interested persons. According to the 1990 Census, Sunflower County's black residents constitute 63.9 percent of the total population and 58.5 percent of the voting age population. The county's first black supervisor in recent history was not elected until 1987, when the county first implemented the existing supervisor redistricting plan following the several Section 5 objections to prior plans based on the 1980 Census. In the 1991 regular election held under that plan, that supervisor was re-elected in District 1 and a second black supervisor was elected in District 2.

On October 25, 1991, we interposed a Section 5 objection to the county's initial redistricting following the 1990 Census. We determined that the county had failed to satisfy its burden of showing the absence of discriminatory purpose because of the unnecessary and unexplained manipulation of the District 4 boundary lines, which had the effect of minimizing the opportunity of black voters to elect a candidate of their choice in that district.

As observed in the objection letter, in order to correct the malapportionment of the current supervisor districts the county must transfer population into Districts 4 and 5 (the two

northernmost districts), and the most straightforward manner in which to accomplish this is to transfer population located in and around the only two towns in the area -- the Town of Sunflower (79% black), currently located in District 3, and the Town of Ruleville (70% black), currently located almost entirely in District 4. In preparing the prior plan, the county determined that it was appropriate to avoid dividing the Town of Sunflower between two districts, and so the county shifted the town and the nearby urban area into District 4. This necessarily involved a population that is almost exclusively black. However, the increase in black voting strength in District 4 that would have been expected to follow did not occur as the county then chose to transfer from District 4 to District 5 an area of Ruleville that also is almost exclusively black, and refused to give any consideration to the known alternative involving the transfer of a substantial number of white residents in Ruleville into District 5.

In the instant plan, although the county sought to some degree to alter the racial composition of the population in Ruleville transferred out of District 4 into District 5, the plan continues unnecessarily to fragment the black population in Ruleville between the two districts. Moreover, the county now proposes to split the Town of Sunflower and its adjacent urban area between Districts 3 and 4, thereby fragmenting the black community in this area as well. Accordingly, while the plan yields a slight increase in black voting strength in District 4 as compared to the objected-to plan, it appears that the county's redistricting decisions again were aimed at minimizing potential black voting strength in this district. These redistricting decisions do not appear to have been necessitated by the one-person, one-vote requirement, but rather appear to have been motivated by a desire to protect the district's incumbent supervisor, who apparently played a major role in drafting the plan. While incumbency protection may in the appropriate circumstances be a proper redistricting goal, we cannot preclear a plan where such protection is obtained at the expense of recognizing the community of interest shared by insular minorities. See, e.g., Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).

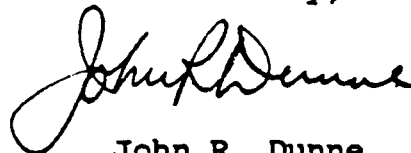
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1992 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. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

With respect to the polling place change for the Ruleville North precinct, the Attorney General does not interpose any objection to this change. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. 28 C.F.R. 51.41. With respect to the precinct realignment, the establishment of the Sunflower 4 precinct, and the polling place change for the Sunflower 3 precinct, the Attorney General will make no determination at this time since they are directly related to the objected-to change. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Sunflower 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,



John R. Dunne  
Assistant Attorney General  
Civil Rights Division