U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 13, 1992

Peggy A. Jones, Esq.
Jones, Brown & Schneller
P. O. Box 117
Holly Springs, Mississippi 38635

Dear Ms. Jones:

This refers to the 1992 redistricting plan for board of supervisors districts and the realignment of the West and South Holly Springs voting precincts in Marshall 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 August 11, 1992.

We have carefully considered the information you have provided, as well as the information contained in our file of the previous redistricting plan, and comments from other interested persons. According to the 1990 Census, Marshall County's black residents constitute 51 percent of the total population and 47 percent of the voting age population.

On September 30, 1991, we interposed a Section 5 objection and on January 23, 1992, declined to withdraw that objection to the county's initial redistricting plan following the 1990 Census. Our September 30, 1991, objection letter noted the following: (1) the 1991 plan "fragments the black community in southwest Holly Springs by separating from District 1 the area between College and Park Avenues and assigning it [to] District 5;" (2) the fragmentation was needless as there was an alternative plan available that "would have avoided this fragmentation by allowing the College/Park area to remain in District 1 and by transferring in its place a roughly equivalent area of white population;" (3) that in the context of past election results in District 1, the plan "adversely impacts upon black voting strength in District 1;" and (4) the county "provided no persuasive justification for its refusal to adopt a readily available alternative which would have avoided this result."

The 1992 plan does not fully address the concerns that prompted our objection to the earlier plan. While the 1992 plan does restore the College/Park area to District 1, it fails to counterbalance that transfer by removing any other population out of District 1. The county's decision not to adopt a full exchange of territory results in a population disparity among districts exceeding the five percent figure that the county had previously claimed as one of its redistricting criteria. Adoption of the full exchange urged by members of the minority community not only would have allowed the county to conform to its previous redistricting criterion but also would have resulted in an increase in District 1's black voting strength.

Examination of recent election returns in District 1 show that supervisor candidates preferred by the minority community have been defeated in primary runoffs by 54 votes in 1987 and 44 votes in 1991. The decision not to effect the full exchange appears to reflect a realization that small changes in the black population percentage may have a significant electoral impact. Indeed, the county's failure to articulate a legitimate nonracial reason for its preference of a plan that increases the population deviation beyond its stated criterion over an alternate plan that satisfies the stated criterion while increasing the black population percentage in District 1 suggests that increasing black voting strength in District 1 was precisely what the county sought to avoid. While we note, in that regard, that the incumbent may have had a particular interest in retaining in the district the white constituency which forms the exchange area, and even though incumbency protection is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting strength. See Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (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). 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.

The Attorney General will make no determination at this time with respect to the submitted precinct realignment since it is directly related to the objected-to change. See 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 Marshall County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division