U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

December 19, 1994

Hubbard T. Saunders, IV
Special Counsel
Crosthwait Terney
P.O. Box 2398
Jackson, Mississippi 39225-2398

Dear Mr. Saunders:

This refers to the change in the method of electing the board of alderpersons from five at large to one at large and four from single-member districts, the method of electing the municipal party committees from six at large to two at large and four from single-member districts, the districting plans therefor, and the procedures for conducting the special elections therefor for the City of Quitman in Clarke 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 July 25, 1994 request for additional information on October 20, 1994.

We carefully have considered the information that you have provided, as well as information provided by other interested persons. According to your submission, the City of Quitman has a total population of 2,736, of whom 33 percent are black, up from 30 percent in 1980. Elections in the City of Quitman, and in Clarke County generally, appear to be characterized by a pattern of racial bloc voting.

The city has changed the at-large method of election for the board of alderpersons and the municipal party committees in response to private voting rights litigation, Citizens for Good Government v. City of Quitman, Civil Action No. E92-0063 (L) (N) (S.D. Ms. 1992), which alleged that the continued use of at-large elections for these offices unnecessarily limited the opportunity for minority voters to elect their candidates of choice. The plan which the city has adopted and submitted for Section 5 review provides for four single-member districts and one at-large seat. This plan provides for one district with a very large black majority (over 78 percent), and a second district with a black population just under the majority (48 percent). A minor shift in boundary lines would have enabled the city to maintain the black majority voting age district at an effective level and increase the black voting age percentage in the second district

to a level at which black voters would have a competitive opportunity to elect candidates of choice as the city's black population percentage continues to increase.

Among the plans considered by the city during the settlement process were other plans with four single-member districts and two plans with five single-member districts. The five district alternatives contained two majority black districts with voting age populations above 60 percent. Such plans would allow black voters an equal opportunity to elect representatives of their choice to the city council. The city has failed to provide any neutral, nonracial basis for the rejection of these alternative plans and the adoption of a plan which artificially limits black electoral opportunities.

While a five district plan is not contemplated under state law, in the context of the resolution of a claim of a violation of federal law, the city could have gone outside the scope of state law to cure what appears to be a clear violation of Section 2 of the Voting Rights Act. Instead, the city appears to have imposed unnecessary obstacles on the negotiation process to avoid providing minority voters with an equal opportunity to elect a second candidate of choice.

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). The existence of some legitimate, nondiscriminatory reasons for the voting change does not satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In addition, the Section 5 Procedures (28 C.F.R. 51.55(b)(2)) require that preclearance be withheld where a change presents a clear violation of the results standard incorporated in Section 2 of the Voting Rights Act, 42 U.S.C. 1973. 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 proposed method of election in the context of the proposed districting plan for both the board of alderpersons and the municipal party committees for the City of Quitman.

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 changes have neither the purpose nor will have the effect of denying or abridging the

right to vote on account of race, color or membership in a language minority group. 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 change in the method of election and the districting plan for the board of alderpersons and the municipal party committees continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

The procedures for conducting the special elections are directly related to the proposed method of election and districting plans for the board of alderpersons and the municipal party committees. Therefore, the Attorney General will make no determination at this time with regard to those changes. 28 C.F.R. 51.22(b) and 51.35.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the City of Quitman plans to take concerning this matter by calling Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section. We believe that the pending Section 2 litigation can be resolved without contested litigation and in compliance with Section 5. Therefore, we are available to assist the parties in their efforts to resolve this matter.

Sincerely,

Loretta King

for Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: Honorable Tom S. Lee
United States District Court

Counsel of Record

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

April 7, 1995

Hubbard T. Saunders IV, Esq.
Special Counsel
Crosthwait Terney
P.O. Box 2398
Jackson, Mississippi 39225-2398

Dear Mr. Saunders:

This refers to your request that the Attorney General reconsider the December 19, 1994, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the change in the method of electing the board of aldermembers from five at large to one at large and four from single-member districts, the method of electing the municipal party committees from six at large to two at large and four from single-member districts, and the districting plans therefor for the City of Quitman in Clarke County, Mississippi. We received your request on February 6, 1995.

We have reconsidered our earlier determination in this matter based on the arguments that you have advanced in support of your request, along with other information in our files and comments from other interested persons. Our analysis of your initial submission showed that according to the 1990 Census, black persons represent 33 percent of the city's total population and 27 percent of the voting age population. Under the objected-to plan, the municipal party committee and the board of aldermembers would have had coterminous district lines. The districting plan provided for one district with a very large black majority (78 percent of the total and 67 percent of the voting age populations), and another with a black population just under the majority (48 percent of the total and 47 percent of the voting age populations).

As we explained in the December 19, 1994, letter, although the objected-to plan did not retrogress the position of black voters when compared to the at-large system, the city's failure to provide a legitimate, non-racial reason for its rejection of alternative plans containing two majority black districts was an indicium of racially discriminatory purpose. The city's efforts to avoid providing minority voters with an equal opportunity to elect a second candidate of choice, which included placing a ceiling on the number of majority black districts it was willing to accept in the settlement plan and unnecessarily overconcentrating the black population in a single majority black district, also revealed a discriminatory purpose. This purpose evidence in conjunction with the apparent racial vote dilution that would have been caused by the overconcentration of black voters in District 1, led to our objection.

The submitting authority has the burden under Section 5 of showing that a submitted voting change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Our objection was based on a number of factors, including our analysis of voting patterns in city elections and the unnecessary overconcentration of black population into District 1. We also considered the fact that the city's demographics appear to allow for the creation of a second district from which black voters would have an opportunity to elect candidates of their choice rather than from only one district as provided for in the objected-to plan. The city has rejected alternatives that would have effectuated this result, as well as those that would have cured the observed overconcentration of black population.

The limited information provided by the city with its request for reconsideration does not warrant us altering our view that the objected-to plan fails to pass muster under Section 5. The city's request presents no new information rebutting our earlier determination that voting in the City of Quitman is racially polarized or that it had neutral, nonracial reasons for the rejection of alternatives preferred by the black community. Nor does it address our concerns that District 2 does not present a district from which black voters will have a fair opportunity to elect their candidates of choice and that black voters are overconcentrated in District 1.

In light of the considerations discussed above, I remain unable to conclude that the City of Quitman has carried its burden of showing that the submitted changes have neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52; the Procedures for the Administration of Section 5 (28 C.F.R. 51.55(b)(2)). Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the proposed method of

election in the context of the proposed districting plan for both the board of aldermembers and the municipal party committees for the City of Quitman.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have 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 changes continue to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (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 the City of Quitman plans to take concerning this matter. If you have any questions, you should call Colleen M. Kane (202) 514-6336, an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division