



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 20, 1995

Lester F. Sumners, Esq.  
Sumners and Carter  
P.O. Drawer 730  
New Albany, Mississippi 38652

Dear Mr. Sumners:

This refers to the 1995 supervisor redistricting plan and the accompanying precinct realignment for Union County, Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on April 21, 1995; supplemental information was received on June 14, 1995.

As you are aware, on August 2, 1991, the Attorney General interposed a Section 5 objection to the initial post-1990 supervisor redistricting plan adopted by the county. As explained in the determination letter, our analysis indicated that the plan substantially fragmented the black population concentrations in and around the City of New Albany with the result that no district was over 20 percent black in population. If this fragmentation were cured, a compact district could be drawn in which black residents would constitute a near majority of the population. In the context of racially polarized voting in county elections, such a district would offer black voters a significant opportunity to influence the election of one of the five supervisors, in this county which is 15 percent black in population. Our analysis indicated that the county had failed to demonstrate that the district lines it selected were free of a discriminatory purpose.

We have carefully considered the information you have provided with regard to the 1995 redistricting plan, as well as information from other interested persons. The submitted plan is

almost an exact replica of the 1991 plan to which the Attorney General objected. Although nearly four years have passed since the prior objection was interposed, the county gave little or no consideration to drawing a plan that would cure the fragmentation of the black population, and took no action to invite the views of the county's black residents regarding the manner in which the new plan should be drawn. The county has provided no nonracial explanation for its actions.

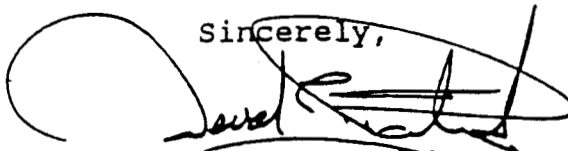
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1995 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, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1995 supervisor redistricting plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

With regard to the precinct realignment, the Attorney General will make no determination on this change since it is directly related to the objected-to supervisor plan. 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 Union County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), Special Section 5 Counsel in the Voting Section.

Sincerely,



David L. Patrick  
Assistant Attorney General  
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

September 8, 1995

Lester F. Sumners, Esq.  
Sumners and Carter  
P.O. Drawer 730  
New Albany, Mississippi 38652

Dear Mr. Sumners:

This refers to the request that the Attorney General reconsider and withdraw the June 20, 1995, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to the 1995 supervisor redistricting plan for Union County, Mississippi. We received the reconsideration request on July 10, 1995.

In its request, the county seeks to rebut our prior conclusion that it failed to provide an adequate nonracial explanation for the adoption of the 1995 plan by setting forth several considerations that, it asserts, underlay its decision to adopt the 1995 plan. These include compliance with the one-person, one-vote requirement, a "least change" approach aimed at preserving the existing districting configuration, equalization of rural road mileage, and provision for each supervisor to represent both rural and urban interests on the board. In addition, the county avers that remedying the plan's fragmentation of the black population in and around New Albany would not be helpful to black voters because it would not produce a black-majority district. The county intimates that remedying the fragmentation could prompt opposition by "displaced office holders and [a] majority of white voters," and argues that it would produce a district whose supervisor would be viewed as a city representative and would be isolated on the board. The request concludes by requesting that the Attorney General provide an evidentiary basis for the objection and notes the recent Supreme Court decision in Miller v. Johnson, 115 S. Ct. 2475 (1995).

In our June 20, 1995, objection letter, as well as in the prior objection letter of August 2, 1991, regarding the nearly identical 1991 supervisor redistricting plan, the Attorney General described specific concerns that prompted our conclusion that the county had failed to satisfy its burden under Section 5 of demonstrating the absence of a discriminatory purpose. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In particular, we noted the plans' severe fragmentation of black population (in the context of racially polarized voting) and the absence of a meaningful opportunity for the county's black citizens to provide input in the redistricting process. In that regard, we noted with respect to the 1995 plan that, while it was adopted nearly four years after the 1991 objection, the county apparently failed to undertake any effort in the intervening period to request input from black citizens on the redistricting issue.

In our reconsideration review, we have carefully considered the arguments made by the county in support of withdrawing the objection. The county's explanations as to why it selected the 1995 plan largely, if not entirely, repeat the information previously provided with respect to the 1995 plan and also the 1991 plan. In reconsidering this information (as when the information initially was considered prior to the interposing of the objections), the Attorney General is guided by the analytic principles established by relevant court decisions and by the Procedures for the Administration of Section 5, 28 C.F.R. Part 51, Subpart F, which sets forth a specific listing "of the factors that the Attorney General considers relevant and of the standards by which the Attorney General will be guided in making substantive determinations under section 5." 28 C.F.R. 51.51.

Under Section 5, the covered jurisdiction has the burden of demonstrating that the submitted change is not based, even in part, on an invidious racial purpose. Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); Busbee v. Smith, 549 F. Supp. 494, 516 (D.D.C. 1982), sum. aff'd, 459 U.S. 1166 (1983). The Section 5 Procedures indicate that the relevant analytic factors include "[t]he extent to which minority concentrations are fragmented among different districts," 28 C.F.R. 51.59(c), and "[t]he extent to which the jurisdiction afforded members of racial . . . groups an opportunity to participate in the decision to make the change." 28 C.F.R. 51.57. In considering these factors (as well as the other factors listed in the Section 5 Procedures) in the context of the totality of the information provided in this Section 5 review, I remain unable to conclude that Union County has carried its Section 5 burden. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the 1995 supervisor 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 neither has 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. 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 continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Union County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), Special Section 5 Counsel in the Voting Section.

Sincerely,



Loretta King  
Acting Assistant Attorney General  
Civil Rights Division