U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

June 11, 1984

C. Havird Jones, Jr., Esq.
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to Act No. 1104, R1357 (1966), which provides for a three-member county council elected at-large from residency districts by plurality vote for two-year, nonstaggered terms in Edgefield County, South Carolina, 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 April 11, 1984.

We have considered the information you have provided, as well as Bureau of the Census data and information furnished by other interested parties. In 1979, the Department conducted a Section 5 review of the county's proposed implementation of home rule in the context of the at-large election system. In interposing a Section 5 objection to the voting changes at issue at that time, our February 8, 1979, objection letter noted:

> Our analysis reveals that blacks constitute 52 percent of the population of Edgefield County and that under the proposed ordinance implementing Home Rule, council members will be elected at-large from residency districts. * * *
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> Court decisions, to which we feel obligated to give great weight, have established that the use of at-large elections in situations where there is a cognizable racial minority and a history of voting along racial lines has the potential for impermissibly diluting minority voting strength. * * *
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> Our review discloses that there has been substantial support for a referendum in Edgefield County, particularly among the black voters. According to our information black citizens of Edgefield County filed petition in May 1976 requesting such a referendum, a request that was denied by the county * * *. It is our further information that black citizens in Edgefield strongly favor the adoption of a single-member district system of elections. However, because the county has rejected the effort of the black community to petition for a referendum and since the county also has chosen not to call for such a referendum on its own motion, the apparent sentiment for a change to single-member districts has not been brought to a vote. Accordingly, the promise of public participation in the selection of the form of government and method of election under home rule has simply not been realized in Edgefield County.

Our review of the present submission reveals that the factors which led to the February 8, 1979, Section 5 objection continue to exist in Edgefield County. We also note that the at-large election structure in Edgefield County has been examined by the District Court for the District of South Carolina to determine whether the at-large system impermissibly dilutes the voting strength of black citizens of the county. The court found initially that the at-large system violated the constitutional standard of Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973). Although a subsequent decision of the Supreme Court resulted in a vacation of the district court's constitutional analysis, the Zimmer factors subsequently were incorporated into Section 2 of the Voting Rights Act as a result of the 1982 Amendments to the Act.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or 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. 51.39(e)). In addition,

a submitted change may not be precleared if it "so discriminates on the basis of race or color as to violate the Constitution" (Beer v. United States, 425 U.S. 130, 141 (1976)), or if we find that the plan violates Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973 (S. Rep. No. 97-417, 97th Cong., 2d Sess. 12 n. 31 (1982)). Under these principles and in view of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the implementation of the provisions of Act No. 1104 (1966).

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to 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 effect of the objection by the Attorney General is to make the implementation of Act No. 1104 (1966) legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of South Carolina plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division