U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

10 AUG 1984

Terrell L. Glenn, Esq.
McNair, Glenn, Konduros, Corley,
Singletary, Porter & Dibble
P. O. Box 11390
Columbia, South Carolina 29211

Dear Mr. Glenn:

This refers to Senate Bill No. 1093, R626 (1984), which establishes a new senate reapportionment plan for the State of South Carolina and a proposed schedule for implementing the plan in special elections this year. These voting changes have been 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 9, 1984, and, in accordance with your request, we have conducted the Section 5 review of the voting changes on an expedited basis pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

The Attorney General does not interpose any objection to the voting changes to be occasioned by the senate reapportionment plan embodied in Senate Bill No. 1093. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See also 28 C.F.R. 51.42 and 51.48.

Although it appears that the reapportionment plan embodied in Senate Bill No. 1093 will afford to black citizens a fair opportunity to participate in the political process and elect candidates of their choice to office, we are concerned whether that potential will become reality in light of the 1984 election schedule which also is contained in the bill. The boundaries of the new districts have received Section 5 preclearance only today, and prospective candidates must qualify no later than 12:00 noon on August 15; a period of only three weeks has been allowed for campaigning before the first primary election. The bill enacting the revised plan was passed by the General Assembly only this week and little has been done to inform voters of the new district boundaries. In fact, our analysis of a map contained in a news article, which you represented to be the State's effort to inform voters with regard to the reapportionment plan embodied in Senate Bill No. 1093, reveals that the printed district boundaries differ significantly from the boundaries contained in Senate Bill No. 1093. You have informed us that other newspapers have printed the correct map, but the potential for voter confusion clearly remains.

In Busbee v. Smith, 549 F. Supp. 494, 518-526 (1982), aff'd, 51 U.S.L.W. 3552 (U.S. Jan, 24, 1983), the District Court for the District of Columbia addressed the Section 5 merits of a similar election schedule. The court's analysis is relevant here (id. at 521):

> The reapportionment plan significantly altered the configuration and racial composition of the ... Districts, [at issue] and neither voters nor potential candidates knew where the lines would fall until the state secured section 5 approval on August 24. Under the state's schedule, the primary - arguably the most important election ... cf. United States v. Classic, 313 U.S.299, 313-14 ... (1941) (discussing the practical importance of primaries) - was to be held only three weeks later. This schedule not only would have prevented potential candidates from mounting effective campaigns, but more important, would have frustrated voters' attempts to prepare themselves to make a reasoned choice among the candidates. We concluded, therefore, that Georgia's defense of its proposed schedule fell far short of meeting the state's statutory burden of proof.

Since the modifications to the boundaries of the reapportionment plan embodied in Act 257--the State's original plan--were undertaken to enhance black voting strength, the truncated schedule is likely to have a particularly disparate impact upon black voters.

We recognize, of course, that the proposed election schedule adopted by the General Assembly is the same schedule adopted by the District Court for the District of South Carolina for implementation of the reapportionment plan approved in Graham v. Daniel, Civ. No. 3:84-1430-15. However, the Graham decision was specific in allowing the General Assembly to enact a new reapportionment plan, and we do not understand the order as precluding the State from adopting an election schedule which will allow for implementation of any such new plan in a racially fair manner.

We have considered also your argument that the proposed schedule (particularly the seven weeks between the runoff and the general election) is necessary to comply with federal statutes designed to protect the voting rights of civilian and military citizens overseas. The argument is unpersuasive for several reasons. The federal statutes at issue (the Overseas Citizens Voting Rights Act, 42 U.S.C. 1973dd et seq. and the Federal Voting Assistance Act, 42 U.S.C. 1973cc), require only that states permit overseas civilian and military personnel to vote by absentee ballot for federal offices, and thus the mandatory provisions of these statutes do not apply to state senate elections. While efforts by states to allow citizens overseas to vote in state and local elections are encouraged and are commendable, we note that the State of South Carolina has made no apparent effort to adopt a schedule which would allow such citizens to vote in the primary and runoff elections for positions in the state senate. Additionally, the State is not precluded from adopting a schedule which would allow overseas citizens to vote in all elections. While such a schedule would lengthen the election process, the longer time period may be necessary to allow all citizens a fair opportunity to participate effectively in the electoral process.

For the above reasons, I cannot conclude that the State has satisfied its burden of demonstrating that the proposed election schedule is entitled to Section 5 preclearance and accordingly, I must on behalf of the Attorney General, interpose a Section 5 objection to the

proposed schedule for implementing the reapportionment plan embodied in Senate Bill No. 1093.

Although I am compelled to enter this objection, we are willing to assist the State in its efforts to devise an alternate schedule which meets the requirements of federal law. Of course, it remains the responsibility of the State to devise the schedule, but you should note that the schedule approved by the court in Busbee provided that the first primary would be held on the date of the general election and the entire election process was completed in the same calendar year. We also have continued to evaluate schedule options which would allow the general election for positions in the senate to be conducted on November 6. In that regard you might consider a schedule whereby candidates would qualify during the period from August 14 through August 28; the first primary would be conducted on October 9; and the second primary would be conducted on October 16. We offer this schedule only as a suggestion and we remain willing to consider alternative schedules. In our view, the important time period is that prior to the first primary and we believe that approximately sixty days is the the minimum time necessary for a racially fair primary election. Options also are available for protecting the voting rights of overseas citizens (such as delaying certification of final election results so as to provide an extended time for receipt of absentee ballots) and we are available to discuss such options if you desire.

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 the election schedule as proposed 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, 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 election schedule 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 Paul F. Hancock (202-724-3095).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division