U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

February 2, 1990

Roy D. Bates, Esq.
Bonham Center, Suite A-200
914 Richland Street
Columbia, South Carolina 29201

Dear Mr. Bates:

This refers to the change in the method of electing the city council from at large to single-member districts, the districting plan, and the election schedule for implementing the election method change, adopted pursuant to the Consent Judgment and Decree in the consolidated cases of NAACP v. City of Bennettsville, No. 4:89-1655-2; and United States v. City of Bennettsville, No. 4:89-2363-2 (D.S.C. November 27, 1989), and the adoption of four-year, staggered terms, for the City of Bennettsville in Marlboro 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 January 17, 1990.

The Attorney General does not interpose any objections to the change in method of election, the districting plan, and the change to four-year, staggered terms. 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 changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the proposed election schedule, under which the new method of election will be implemented at the next regularly scheduled municipal election in April 1991, we are unable to make a similar determination. At the outset, we note that the city does not contest that under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, a prima facie case exists that the current at-large method of election denies black citizens an equal opportunity to participate in the political process and elect candidates of their choice to office. Accordingly, it is incumbent upon Bennettsville to effectuate the transition to a nondiscriminatory method of election as expeditiously as possible to ensure that the remedy "will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in

the future." Louisiana v. United States, 380 U.S. 145, 154 (1965).

In that regard, prior to the entry of the Consent Judgment and Decree and the adoption of the submitted changes, the city represented that it was feasible to implement the remedial plan in a special election to be conducted during the first half of this year, and that the city intended to adopt such a course of action. This is in accord with the approach taken in other Section 2 cases where special election relief has been ordered. See, e.g., Neal v. Coleburn, 689 F. Supp. 1426 (E.D. Va. 1988); Ketchum v. City Council, 630 F. Supp. 551 (N.D. Ill. 1985). See also United States v. City of Cambridge, 799 F.2d 137 (4th Cir. 1986). To assist in the scheduling of such a special election, we assured the city in a December 29, 1989, letter that we were fully prepared to give expedited Section 5 consideration to the new election plan.

In spite of this assurance, the city now has advised us that an election this spring is impracticable because of the necessity of a Section 5 review, and because of state law requirements which principally involve giving 60 days notice of the election. The city further advises us that a municipal election could not be scheduled to coincide with the regularly scheduled June 12, 1990, county election because of limited space available at the polling places and potential voter confusion. However, we have been advised that the polling places are large enough to accommodate a joint election, which it appears could be adequately administered by trained poll officials.

More broadly, the city's decision to postpone the implementation of the single-member district method of election appears to echo the efforts the city has made to avoid allowing its black residents a full and equal opportunity to elect representatives of their choice. Thus, although the city essentially concedes that the at-large system is racially discriminatory, prior to the filing of the complaints in the Section 2 lawsuits the city resisted numerous efforts by the black community to obtain a fair method of election. Requests for a change were met by delay, by a proposal to amend the at-large system to add residency districts (thus eliminating the electoral opportunity available to black voters by single-shot voting), and, when a referendum finally was held on a mixed district and at-large method of election, the city prepared ballot language which created significant voter confusion and which a state court found was in violation of state law. And now that the adoption of a fair election plan has been mandated through judicial action, the city is attempting to delay the opportunity for voters in the city to elect representatives under that plan based upon deliberations from which the black community was excluded.

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 28 C.F.R. 51.52. In view of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that this burden has been sustained with regard to purpose. In addition, our guidelines require that preclearance be withheld if "necessary to prevent a clear violation of amended Section 2." 28 C.F.R. 51.55(b)(2). In the circumstances presented here, where black citizens have been denied an equal opportunity to participate in the political process and the holding of a special election imposes no undue burden, Section 2 provides an additional basis for withholding preclearance of the proposed election schedule. For these reasons, then, I must, on behalf of the Attorney General, interpose an objection to this aspect of your submission.

We note that the Consent Judgment and Decree requires that if the requisite preclearance is not obtained, the parties shall so advise the Court within seven days, and submit proposals for further proceedings as appropriate. Accordingly, please advise us within five days of the course of action the City of Bennettsville plans to take with respect to this matter. Should the city propose to promptly conduct a special election to implement the precleared method of election, we are prepared to give such a proposal immediate review under Section 5.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division