U.S. Department of Justice

Civil Rights Division

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

JAN 17 1992

Emil W. Wald, Esq.
Spencer & Spencer
P.O. Box 790
Rock Hill, South Carolina 29731-6790

Dear Mr. Wald:

This refers to the 1991 redistricting plan for city council districts for the City of Rock Hill in York 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 response to our request for more information on November 18, 1991.

We have considered carefully the information you have provided, as well as comments provided by other interested parties. At the outset, we note that the city has a council of seven members, six of whom are elected from single-member districts with the seventh, the mayor, elected at large. In the context of this 6-1 electoral system, we understand that the city proposed a plan with two districts in which blacks would constitute a majority of the total population and voting age population and a third district in which blacks would constitute a significant minority of 43 percent. In response, representatives of the local black community expressed concern over the level of representation such a proposal would afford the black community and proposed instead a plan which contained three districts in which blacks would constitute a majority. The plan ultimately adopted by the city, and presently before us, contains the two majority black districts.

The city offers two principal reasons for rejecting the alternative approach, the first being that the alternative plan did not take into account the residences of the incumbent councilmembers, four of whom were combined in two districts. Our analysis indicates, however, that a number of different boundary line modifications could easily have alleviated this concern.

Moreover, while we recognize that the desire to protect incumbents may not in and of itself be an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09, (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Where, as here, the protection afforded several white incumbents is provided at the expense of black voters, the city bears a heavy burden of demonstrating that its choices are not tainted, at least in part, by an invidious racial purpose.

The second reason advanced by the city for rejecting the alternative proposal appears to be the city's insistence that the minority community in the city is entitled to no more than two minority districts and an "influence" district, which is defined by the 43 percent black district. Not only would such an approach appear to set an artificial limitation on minority representation, an analysis of the submitted plan also reveals that an area of black population concentration immediately adjacent to District 1 known as Boyd Hill is fragmented unnecessarily from the black community contained in the minority districts and submerged in a nonminority district. The city's explanation for this fragmentation is that including the area in District 1 would unnecessarily "pack" minority voters into this district. Yet, had the city included the Boyd Hill area in District 1 and then shifted black population from District 1 to District 5 and from District 5 to District 3, as the city was urged to do by members of the minority community, the logical result would appear to have been three districts which more fairly recognize black voting strength in the city. While we do not mean to suggest in any way that the city is required to adopt any particular alternative that was presented to it, we similarly do not believe that the artificial limitation apparently set by the city can be countenanced under the Voting Rights Act.

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). 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 city council 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 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, 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 city council redistricting plan continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Rock Hill plans to take concerning this matter. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division