



U.S. Department of Justice

Civil Rights Division

---

Office of the Assistant Attorney General

Washington, D.C. 20530

July 21, 1992

Robert R. Horger, Esq.  
Horger, Barnwell & Reid  
P. O. Drawer 329  
Orangeburg, South Carolina 29116-0329

Dear Mr. Horger:

This refers to the 1992 redistricting plan for Orangeburg 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 responses to our request for more information on May 22, June 4, and July 1, 1992.

We have carefully considered the information you have provided, as well as Census data and comments from other interested parties. According to the 1990 Census, black persons comprise approximately 58 percent of the total population in Orangeburg County. The seven members of the Orangeburg County Council are elected from single-member districts and there appears to be a pattern of racially polarized voting in county elections.

Our review of the redistricting process has shown that the black community consistently sought from the earliest stages a redistricting plan that would contain at least four districts in which black citizens would have the opportunity to elect candidates of their choice. A series of alternative redistricting plans was presented to the council by representatives of the black community. None of these alternative plans was adopted, nor does it appear that they received serious consideration by the council majority. While Orangeburg County was not required to adopt any particular plan advocated by the black community, the county is required to show that the plan it adopted was not motivated, at least in part, by a desire to deny or abridge the right to vote on account of race or color.

In this regard, many of the reasons presented to us for rejecting these alternative plans appear to pretextual. Furthermore, it appears that the protection of incumbents, particularly white incumbents, and the desire to confine the black population percentage in District 5 to a predetermined and unnecessarily low level, were dominant factors in the council's redistricting choices.

Moreover, as you are aware the 1990 Census showed that the current redistricting plan is malapportioned and that District 5 in particular is significantly overpopulated. Our analysis indicates that the proposed redistricting plan unnecessarily removes black population from existing District 5 in the process of reducing the district's population deviation. We note also what appears to be unnecessary fragmentation of majority-black areas within the City of Orangeburg.

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 county 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 county redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (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 Orangeburg County plans to take concerning this matter. If you have any questions, you should call Robert Kengle (202-514-6196), an attorney in the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Dunne".

John R. Dunne  
Assistant Attorney General  
Civil Rights Division