



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

November 9, 1992

James F. Walsh, Jr., Esq.
436 Amelia Street, N.E.
Orangeburg, South Carolina 29115

Dear Mr. Walsh:

This refers to the change in method of electing the city council from at large to four single-member districts with the mayor elected at large, and the districting plan for the Town of Norway in 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 response to our request for additional information on September 9, 1992.

We have considered carefully the information you have provided, as well as information provided by other interested persons. The Attorney General does not interpose any objection to the method of election change. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the districting plan, however, we cannot reach the same conclusion. According to the 1990 Census, Norway has a total population of 401, of whom 57 percent are black. Blacks constitute 52 percent of the voting age population. The town is governed by a five-member council composed of the mayor and four other councilmembers. Our analysis indicates that town elections are characterized by racially polarized voting. We understand that it was not until 1989 that the first black candidate was elected to the town council, and a second black candidate was elected in 1990 in a close election that produced an apparent record turnout among both whites and blacks.

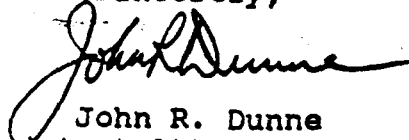
The proposed districting plan includes two districts with black population majorities, which are 93 and 87 percent black. The other two districts are 46 and 8 percent black. In the political circumstances present in Norway, it appears that this plan will limit black voters to an opportunity to elect no more than two members of the council. Moreover, our review indicates that the extremely heavy concentration of blacks in two districts is not necessary to assure that black voters will have the opportunity to elect their preferred candidates. While residential patterns may make it unavoidable that one district includes such a high black concentration, it appears that a number of districting options are available that satisfy the town's districting criteria without minimizing black voting strength by overconcentrating blacks in two districts. In these circumstances, the town has failed to provide a legitimate nonracial explanation for its districting decision.

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 light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the town's burden has been sustained in this instance with regard to the districting plan. Therefore, on behalf of the Attorney General, I must object to the districting plan for the town council.

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 districting plan 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, 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 districting 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 the Town of Norway plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), Special Section 5 Counsel 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