



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

January 5, 1993

James E. Brogdon, Jr., Esq.
County Attorney
P. O. Box 1041
Marion, South Carolina 29571

Dear Mr. Brogdon:

This refers to the 1992 redistricting plan for the county council and county school board in Marion 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 November 6, 1992.

We have carefully considered the information you have provided, as well as Census data and comments from other interested parties. According to the Census, the black proportion of Marion County's total population increased from approximately 50 percent in 1980 to approximately 55 percent in 1990. Both the county council and the county school board have seven members and are elected from single-member districts. The county council, however, has partisan elections, while the county school board has nonpartisan elections.

Under the existing redistricting plan, there are two districts with black population percentages in excess of 65 percent and three districts with black population percentages between about ~~51~~ and 57 percent. In elections under this plan, black voters consistently have been able to elect candidates of their choice from the two districts over 65 percent black in

population to both the county council and the county school board. In addition, a black-sponsored candidate for the county council has been successful in a third district. Thus, at the time of the redistricting there were three black county council members and two black school board members.

The information you have provided reveals that the county council decided that its 1992 redistricting plan, which also would apply to elections for the county school board, should provide for no more than three districts with substantial black population majorities plus one district that would have a black population percentage no higher than the black population percentage in the county as a whole. The proposed redistricting plan accomplishes that result; it has three districts with black population percentages in excess of 65 percent and one district --District 2--with a black population percentage of about 55 percent.

Our analysis of the demographics in the county indicates that as a result of the ceiling placed on the black share of the population in District 2, black population concentrations are fragmented. The county contends, however, that its redistricting decisions were not racially discriminatory because its plan provides black voters a realistic opportunity to elect candidates of choice in three districts and creates a "swing" district, as well. We have considered this contention in light of the history of racial discrimination in the county and the election results over the past decade. There appears to be a persistent pattern of racially polarized voting in the county, with black-sponsored candidates facing consistent defeat other than in election districts with substantial black majorities. The one exception--the success of a black county council candidate in existing District 5--appears to be isolated. In addition, there is insufficient evidence that voter behavior in that district, which is centered in the City of Mullins and the Town of Nichols in the eastern part of the county, is likely to be replicated in the large, rural area in the western part of the county, which the proposed plan places in District 2.

Moreover, the county council was informed by representatives of the black community about their concerns regarding the effect of the ceiling placed on the black share of the population in proposed District 2. The alternative plan proposed by representatives of the black community appears not to have received serious consideration by the county council and the county has not proffered an explanation--other than its predetermined limit on the black share of the population in District 2--for rejecting the alternative plan. While we do not mean to suggest that the county council was required to adopt

this particular plan, which has four districts with substantial black population majorities, we note that at the very least this plan revealed that fragmentation of the black population concentrations on the borders of District 2 was not necessary to achieve any non-racial redistricting objective.

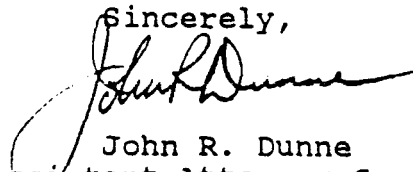
Finally, it appears that the protection of the interests of incumbents played a significant role in the county council's redistricting efforts, and that these interests may have led to the limitation on black population in District 2. While we recognize that the desire to protect incumbents may not in 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 incumbents appears to be provided at the expense of black voters, the county council bears a heavy burden of demonstrating that its choices are not tainted, at least in part, by an invidious racial purpose.

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 redistricting plan for the county council and school board.

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 council and school board 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 Marion 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". The signature is written in dark ink and is positioned above the typed name.

John R. Dunne
Assistant Attorney General
Civil Rights Division