



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 8, 1993

Mr. Herman H. Felix  
Chairperson, Lee County Council  
Courthouse Square  
Bishopville, South Carolina 29010

Jacob H. Jennings, Esq.  
Jennings & Jennings  
P.O. Box 106  
Bishopville, South Carolina 29010-0106

Dear Messrs. Felix and Jennings:

This refers to the 1992 redistricting plan for the county council and county school board in Lee 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 requests for additional information on August 31 and December 10, 1992; supplemental information was received on September 28 and 29, October 7, 15, and 23, 1992, and January 27, 1993.

We have carefully considered the information you have provided, as well as information provided by other interested persons. According to the 1990 Census, blacks comprise 62 percent of Lee County's total population and 57 percent of its voting age population. The county council and school board are comprised of seven members elected from seven single-member districts; county council and county school board districts are coterminous.

Under the existing redistricting plan, there are two districts with black populations in excess of 74 percent and five districts with black population percentages between 52 and 63 percent. In elections held under this plan, black voters have been able to elect candidates of their choice in the two

districts over 74 percent black in population to both the county council and county school board (Districts 3 and 5). Thus, at the time of redistricting, there were two black persons serving on the county council and county school board; all were elected from Districts 3 or 5.

The redistricting process appears to have been controlled by four of the white councilmembers, without the benefit of substantial input from the black councilmembers or members of the minority community. The self-described goal of the council was to draw a plan that retained Districts 3 and 5 as districts with sizeable black population majorities while drawing two other districts with no more than a 65 percent black share of the population. The proposed redistricting includes two districts with black population percentages of 76 and 77 percent (Districts 3 and 5, respectively), and two districts with 65 percent black population percentages (Districts 1 and 6). The three remaining districts have black percentages of 57, 51 and 47 percent.

Our analysis of the demographics of the county indicates that as a result of the county's choice to limit the black share of the population of Districts 1 and 6 to 65 percent, black population concentrations have been fragmented. The county contends, however, that black voters will have a realistic opportunity to elect candidates of their choice in the four proposed districts with 65 percent or better black population percentages -- which includes Districts 1 and 6. We have considered these contentions in light of the history of racial discrimination in the county, the disparate socio-economic conditions between the county's black and white populations, the respective black and white voter registration and turnout rates, and the election results over the past decade. There appears to be a persistent pattern of extremely racially polarized voting in the county, with black-sponsored candidates facing consistent defeat other than in election districts with substantial black population majorities. Moreover, the effects of the polarization in voting are exacerbated by the lower registration and turnout rates of blacks compared to whites which are traceable to the history of ~~discrimination~~ and resulting disparities in socio-economic status. These differences appear to be particularly severe in proposed District 6.

Concerns with the proposed plan were raised by the black community during the redistricting process but the alternative plan they proposed does not appear to have been given serious consideration by the county council. In addition, the county rejected a proposal for a bi-racial committee to study the county's proposed and the minority-sponsored alternative plans, despite concerns of the minority community that they were not provided a meaningful opportunity to participate in the

development of the county's redistricting proposal, which they pointed out was the result of an all-white redistricting committee's efforts. While we do not mean to suggest that the council was required to adopt this alternative plan, we note that the alternative plan demonstrates that it was possible to create more than two districts with substantial black population majorities of at least 70 percent without departing from legitimate, nonracial redistricting criteria.

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 limiting artificially the black population in Districts 1 and 6, and reducing the black population percentages in Districts 2, 4 and 7. 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 Lee County plans to take concerning these matters. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "James P. Turner".

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division