U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 6, 1994

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Helen T. McFadden, Esq.
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Dear Mr. Jennings and Ms. McFadden:

This refers to the adoption of a special election schedule (including the candidate qualifying period, the selection of an April 19, 1994 special primary election date; a May 3, 1994 special run-off election date; and a June 7, 1994 special general election date) 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 submission on May 5, 1994; supplemental information was received on May 6, 20, 27 and June 1 and 2, 1994.

We have carefully considered the information you have provided as well as Census data, information contained in our files of the county's previous Section 5 submissions and information received from other interested persons. According to the 1990 Census, black persons constitute 62 percent of Lee

County's total population and 57 percent of its voting age population. Both the county council and school board have seven members elected from identical single-member districts. Two black persons serve on the county council and on the school board.

Both bodies have staggered, four-year terms. For the county council, the 1992 elections in Districts 1, 2 and 5 were postponed; elections in Districts 3, 4, 6 and 7 are scheduled for later this year. For the school board, the 1992 elections in Districts 1, 2, 3 and 7 were postponed; elections in Districts 4, 5 and 6 are scheduled for later this year. The 1992 elections were postponed because the existing redistricting plan violated the one person, one vote requirement of the Fourteenth Amendment and the county had failed to adopt and obtain Section 5 preclearance for a new redistricting plan in time for elections to be held in 1992. This submission concerns the county's special election schedule for the districts in which the 1992 elections were postponed and the incumbents have held over in office.

On February 8, 1993, the county's first redistricting effort prompted a Section 5 objection by the Attorney General. Our objection letter noted that there appeared 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." We found that "[t]he 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," that "black population concentrations have been fragmented," and that "the protection of the interests of incumbents played a significant role in the county council's redistricting efforts." The letter expressed particular concerns about the configuration of District 1, one of the districts at issue in the submitted special election schedule.

On February 4, 1994, the Attorney General granted Section 5 preclearance to redistricting plans adopted in response to the objection. The district configurations in the new redistricting plans reflect significant population shifts and divisions of voting precincts from the old plans. Most notably, the black population percentage in District 1 increases by twelve percentage points from the existing plan (53.6% black in voting age population) to the precleared plan (65.4% black in voting age population). Moreover, all nine voting precincts in new District 1, which is 62 percent black in voter registration, are split between two or more Districts as compared with the old redistricting plan in which District 1 split only one voting precinct.

It is against this backdrop that we have evaluated the county's decision to set an expedited special election schedule for the districts affected by the postponement of the 1992 election, rather than hold those special elections at later dates, such as the same dates as the regularly scheduled 1994 elections. Our analysis indicates that the county did not take adequate steps given the choice of an early election schedule to ensure that voters were made aware of the new district boundaries and, in particular, the locations of their residences within voting precincts split now between two or more districts. The latter point is particularly significant since the configurations of the new districts split sixteen of twenty-four precincts in comparison to only four split precincts under the old plan.

Moreover, it appears that there was confusion among minority voters in the April 1994 primary election, which was held without preclearance. We have received information that suggests that much of the confusion occurred in District 1, a district that includes a significant black registration majority under the new redistricting plan. Specifically, black voters were in some instances refused ballots without a sufficient explanation or opportunity to cast a ballot subject to challenge and, in at least one instance, received the wrong ballot from a poll worker. In that vein, we understand that not all poll workers were sufficiently familiar with the new redistricting maps to determine the location of minority voters' residences within the appropriate districts.

Insufficient publicity and distribution of the proposed redistricting plans apparently contributed to the voter confusion that marked the April 1994 primary election. The map was published in the local newspaper only once before the election was held. That paper is a weekly and apparently does not have a widespread circulation in the black community. The county appears to have abrogated to black candidates and other concerned citizens its responsibility to effectively inform its voters of the manner in which the new redistricting plans affected their opportunity to vote for district seats on the council and school board.

The circumstances presented by the instant submission suggest that the county's selection of the early schedule was motivated, at least in part, by a desire to diminish black voting potential. The implementation of the new redistricting plan effected significant changes in district assignments for many black voters. The increase in the black percentage in District 1 created a new opportunity for black voters to elect candidates of their choice. The county, however, failed to take adequate steps under these circumstances to publicize information regarding the

new district boundaries and to notify black voters (and election-day personnel) of their location in the respective districts in advance of the election. The consequence of these actions, which was reasonably foreseeable, was reduced black voter participation in the special primary election.

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 special election schedule (including the candidate qualifying period, the selection of an April 19, 1994 special primary election date; a May 3, 1994 special run-off election date; and a June 7, 1994, special general election date) for the county council and county school board in Lee County, South Carolina.

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 change 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 special election schedule continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

We understand that a special general election, under the now objected-to special election schedule, is to be held on June 7, 1994. The county has indicated that it intends to proceed with the special general election, even if an objection is interposed. This letter is to notify you that I have authorized the filing of a lawsuit to enforce the preclearance requirements of Section 5 of the Voting Rights Act with regard to the voting changes to which an objection has now been interposed. The action seeks declaratory and injunctive relief against further implementation of the special election schedule, unless and until preclearance is obtained, as well as remedial relief for the violation of the Voting Rights Act resulting from the previous implementation of the unprecleared election schedule.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us promptly of the action Lee County plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

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JUN 23 1994

Helen T. McFadden, Esq.
Jenkinson, Jenkinson & McFadden
P. O. Drawer 669
Kingstree, South Carolina 29556

Dear Ms. McFadden:

This refers to your request that the Attorney General reconsider the June 6, 1994, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1994 special election schedule (including the candidate qualifying period, the selection of an April 19, 1994, special primary election date, a May 3, 1994, special runoff election date, and a June 7, 1994, special general election date) for the county council and county school board in Lee County, South Carolina. We received your request on June 14, 1994.

We have reconsidered our earlier determination in this matter based on the information and arguments that you have advanced in support of your request, along with other information in our files and comments from other interested persons. Your request does not contain any new factual information. Rather, you suggest that we are erroneous in our conclusions, without providing any supporting documentation or relevant legal arguments in support of your contentions. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.45).

Specifically, our prior review showed that the county took inadequate steps to ensure that voters were made aware of the new district boundaries, and accompanying precinct changes, that were occasioned by our preclearance of the 1993 redistricting plan for the council and school board. Moreover, information made

available to us showed that this lack of publicity led to markedly lower black voter participation for the unprecleared April 19, 1994, special primary election as well as black voter confusion with regard to the location of their correct voting precincts for that election. You have not responded to our concerns that the county's election schedule was adopted, at least in part, to diminish black voting potential.

Your letter refers to the results of the April 19, 1994, special primary election at which a black candidate was elected to the school board from a white majority district and a white candidate to the county council from a black majority district as indicative of a lack of discriminatory intent on the part of the county in selecting the objected-to election schedule. However, your request does not provide any support for your conclusion that these election results respond adequately to the Section 5 concerns raised about black voter confusion in District 1 or the lack of notice of the new redistricting plans to the county's voters.

The county argues that conducting the special primary and general elections in April and June, respectively, and seating the winners shortly thereafter would enable the newly elected officials to participate in fiscal decisions for the county this year. The county has offered no evidence suggesting that this factor was considered by the council when it decided to adopt a truncated special election schedule. In any event, in satisfying its Section 5 burden, the county must demonstrate that the choices underlying the proposed change are not tainted, even in part, by an invidious discriminatory purpose; it is insufficient to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983).

Finally, we have considered the county's contention that it has no authority under state law to delay its election of the three council and four school board seats at issue. However, it

appears that state law is silent on the issue of the holding of an election in situations where there are holdover incumbents. Thus, the county could have exercised its discretion in holding these special elections at a time when voter education and outreach regarding the new districts could have been accomplished. You have not provided any basis for us to alter our view that the proposed change will make it less likely that black voters will be able to elect their candidates of choice to the county council and to the school board.

In light of the considerations discussed above, I remain unable to conclude that Lee County has carried its burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the 1994 special election schedule (including the candidate qualifying period, the selection of an April 19, 1994, special primary election date, a May 3, 1994, special runoff election date, and a June 7, 1994, special general election date) for the county council and county school board.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

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 this matter. If you have any questions, you should call Zita Johnson-Betts (202) 514-8690, an attorney in the Voting Section.

Because the Section 5 status of the special election schedule is the subject of ongoing litigation in United States v. Lee County and NAACP v. Lee County, we are providing a copy of this letter to the court and counsel of record in those cases.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: The Honorable Donald S. Russell
United States Circuit Court Judge

The Honorable Joseph F. Anderson, Jr.
United States District Judge

The Honorable Dennis W. Shedd
United States District Judge

Counsel of Record

Paul Fata, Esq.