



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 12 1991

James N. Hopper, Esq.
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P. O. Box 1201
Richmond, Virginia 23209

Dear Mr. Hopper:

This refers to the redistricting of supervisor districts and the precinct realignment in Powhatan County, Virginia, 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 August 26, 1991, request for additional information on September 10, 1991.

We have given careful consideration to the materials you have submitted, as well as to information and comments from other interested parties. We note at the outset that according to the 1990 Census, 21.4 percent of the population of Powhatan County is black, yet no black person has ever been elected as county supervisor. The county's black population is concentrated in the northwestern portion of the county in such a way that readily available alternatives would allow black voters an opportunity to elect candidates of their choice in one of the five supervisor districts, but this result seems to have been avoided through the division of the county's black population between Districts 3 and 5. While District 3 of the proposed plan ostensibly has a black majority in total population, the black proportion of this district is only 38 percent when the non-voting population of the Powhatan Correctional Center is excluded.

During the redistricting process, the county appears to have been aware of the interest on the part of black citizens to have their voting potential better recognized, especially by creating a district that combines the black population in the northern portion of the county in one district. While we have noted the several reasons advanced by the county for rejecting this approach, our analysis suggests that the county's actions may have been motivated, in large part, by the desire to maintain districts conducive to the re-election of the incumbent supervisors, all of whom are white. While we recognize that the

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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).

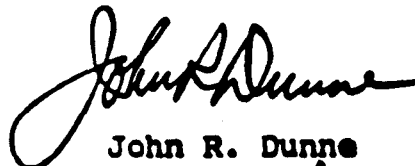
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In view of the concerns noted above, however, I am unable to conclude, as I must under the Act, that the county has carried its burden with regard to the submitted changes. Accordingly I must, on behalf of the Attorney General, interpose an objection to the proposed redistricting plan for supervisors in Powhatan County.

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 redistricting plan for the supervisor districts continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.A. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

With respect to the realignment of voting precincts, the Attorney General will make no determination at this time since it is directly related to the objected-to change. 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Powhatan County plans to take concerning this matter. If you have any questions, you should call Richard B. Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division