



## Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 20 1998

John C. Henry, Esq.  
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Dear Mr. Henry:

This refers to the 1997 redistricting plan for the county council for Horry County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our January 26, 1998, request for additional information on February 11, March 2, April 3, and April 9, 1998; supplemental information was received on February 20, 1998.

We have carefully considered the information you have provided, as well as Census data, and information and comments from other interested persons. Section 5 of the Voting Rights Act requires that the submitting authority demonstrate that the proposed change has neither a discriminatory purpose nor a discriminatory effect. 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 Beer v. United States, 425 U.S. 130, 141 (1976), the Supreme Court made clear that a voting change that diminishes "the ability of minority groups to participate in the political process and to elect their choices to office" is retrogressive and should not be precleared under Section 5. The benchmark for determining whether a redistricting plan will have a retrogressive effect under Section 5 is the plan "in effect at the time of the submission," unless the existing plan is legally unenforceable under Section 5, see 28 C.F.R. 51.54(b), or has been found by a federal court to violate the constitutional principles established in Shaw v. Reno, 509 U.S. 630 (1993) and

Miller v. Johnson, 515 U.S. 900 (1995). See Abrams v. Johnson, 117 S. Ct. 1925 (1997). Under either of these circumstances, the benchmark for measuring retrogression is the last legally enforceable plan or procedure used by the jurisdiction. Id.

On October 31, 1997, the federal district court in Prince v. Horry County Council, CA No. 4:97-0273-12 (D.S.C.), based on stipulated liability by the county, found that Districts 7 and 9 of Horry County's existing redistricting plan violated the constitutional principles recognized in Shaw v. Reno, and ordered the county to adopt a plan that remedied these concerns and submit the plan for Section 5 review. Therefore, in our review of the instant submission, the county's proposed plan must be measured against the last legally enforceable redistricting plan that was in effect in Horry County, which was a plan precleared on March 8, 1982 [hereinafter "the benchmark plan"].

According to 1990 Census data, black persons represent approximately 18 percent of the county's total population and 15 percent of its voting age population. The county's 12-member council is elected from 11 single-member districts with the chairperson elected at large. At present, two of the 12 councilmembers are black and they represent the only two districts in the county with black population majorities -- Districts 7 and 9. Information provided by the county does not establish the absence of racially polarized voting in Horry County. Furthermore, we note that racially polarized voting has been found to exist recently throughout the State of South Carolina. See Smith v. Seasley, 946 F. Supp. 1174, 1202-1203 (D.S.C. 1996) (three-judge court); see also Burton v. Shebeen, 793 F. Supp. 1329, 1357-1358 (D.S.C. 1992) (three-judge court) (noting parties' stipulations for that case that "since 1984 there is evidence of racially polarized voting in South Carolina."), vacated and remanded sub nom., Campbell v. Theodore, 508 U.S. 968 (1993).

The county's benchmark plan (using 1990 Census data) includes one district, District 7, with a 54 percent black population majority, and a 50 percent black voting age population. Under the proposed plan, no district has a black voting age percentage approaching that of District 7 in the benchmark plan. Proposed District 7 has a black population of 47 percent, and a black voting age population of 43 percent. Proposed District 9 is 50 percent black in total population and 44 percent black in voting age population.

Based upon voter registration data provided by the county, black voters appear to represent approximately 44 percent of the registrants in proposed District 7 and 35 percent of the registrants in proposed District 9. These percentages are significantly lower than the black registration percentage for District 7 in the benchmark plan, which appears to be greater than 50 percent black.

We are aware that proposed District 9 has a black population percentage of 50.04, according to 1990 Census data. However, our investigation reveals that this district includes areas that have experienced significant white population growth since 1990. This information together with the county's estimates that the district is only 35 percent black in registration, indicate that the district likely is significantly less than 50 percent black in population. Thus, under the proposed plan, black registrants will not constitute a majority in any district and, in the context of racially polarized voting, their ability to elect candidates of choice to the county council will be greatly diminished.

We recognize that a reduction in minority voting strength that is required by the United States Constitution does not violate Section 5. Indeed, we have long applied this principle in the context of our review of plans adopted to comply with the constitutional one-person, one-vote requirement. See Revision of the Procedures for the Administration of Section 5, Supplementary Information, 52 Fed. Reg. 436, 483 (Jan. 6, 1987). Similarly, the circumstances presented in Horry County might well require some reduction in minority voting strength in order to both address the Prince court's constitutional concerns and correct for population inequalities in the benchmark plan, but any reduction in minority voting strength would require evaluation to determine whether the plan goes farther than is necessary to address these concerns.

Applying these principles, we have concluded that the county has not met its burden under Section 5. From our analysis of the geography and demographics of the area in and around the proposed District 7, which is located on the west side of the county in the same general area as the benchmark District 7, it appears that there are alternative redistricting configurations that are constitutional, yet would have lessened the reduction in black voting strength in District 7. Indeed, the plan first drawn by the county's demographers and thereafter considered by the county council included a district located in the western portion of the county with a black total population of 52 percent, and a black voting age population of 48 percent (numbered District 9 in that

plan). Using 1998 registration data, it appears that black voters would constitute approximately 49 percent of the registrants in that district. This alternate plan does not diminish black voting strength to the degree seen in the proposed plan and also appears to address the Prince court's concerns.

Because these alternate redistricting configurations illustrate the ability to create a reasonably compact district that reduces black voting strength to a lesser extent than the proposed plan, we cannot conclude that the reduction in the black population percentage in District 7 occasioned by the proposed plan was necessary or required in order to address the Prince court's constitutional concerns. In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden of proving that the proposed plan does not result in "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise" that is not required to bring the county council redistricting plan into compliance with the Equal Protection Clause of the Fourteenth Amendment. See Beer, 425 U.S. at 141. Accordingly, on behalf of the Attorney General, I must object to the 1997 redistricting plan for the Horry County 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 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. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia is obtained, the proposed 1997 county council redistricting plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

It is our understanding that the districts currently used to elect members of the Horry County Board of Education follow the boundary lines used to elect county councilmembers. You have informed us that Horry County does not have the authority to submit board of education redistricting changes for Section 5 review. Therefore, our review of the instant submission was limited to a review of the proposed redistricting plan for county council districts. Review under Section 5 is required for any use of the plan in conjunction with the election of county school board members.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Horry County plans to take concerning this matter. If you have any questions, you should call Cal Gonzales (202-514-6450), an attorney in the Voting Section.

Because the redistricting of the Horry County council is at issue in Prince v. Horry County Council, CA No. 4:97-0273-12 (D.S.C.), we are providing a copy of this determination letter to the court and counsel of record.

Sincerely



Bill Lann Lee  
Acting Assistant Attorney General  
Civil Rights Division

cc: The Honorable C. Weston Houck  
Chief United States District Judge

William H. Freeman, Esq.  
John Roy Harper, II, Esq.  
John Singleton, Esq.