U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 27, 1999

Benjamin W. Emerson, Esq.
Sands Anderson Marks & Miller
P.O. Box 1998
Richmond, Virginia 23218-1998

Dear Mr. Emerson:

This refers to the polling place change in the Darvills Precinct (No. 101) for Dinwiddie County, Virginia, 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 September 28, 1999, request for additional information on October 1 and 4, 1999; supplemental information was received on October 14, 1999.

We have considered carefully the information you have provided, as well as data from the United States Census, information in the county's prior Section 5 submissions, and information and comments from county officials and other interested persons.

The Darvills Precinct, which is located in Supervisor District 1, extends approximately 12 miles from the community of Darvills on the west to the community of DeWitt on the east. The precinct is heavily rural, containing no incorporated towns or public schools. Until 1998, voting in this precinct took place at the Darvills Community Center located on the western edge of the precinct. We understand that the Darvills Community Center, although available upon rental to the public, was not commonly utilized by black persons. The Darvills Community Center was destroyed by fire, and the Dinwiddie County Electoral Board, after surveying alternative locations, recommended that the Dinwiddie County Board of Supervisors designate the Cut Bank Hunt Club ("Hunt Club") as the new polling place for the precinct. The board of supervisors adopted the recommendation, and the Hunt Club was used in the November 3, 1998, election. The Hunt Club is a privately owned hunting club with a predominantly black membership. Prior to the election the Hunt Club installed a ramp to provide access for persons with disabilities and put gravel on the road leading to the polling place. We understand that for

the November 2, 1999, election, the Hunt Club plans to further improve the road leading to the polling place, install additional lighting, and secure liability insurance.

Seven months after the 1998 election a petition containing 105 signatures was presented to the board of supervisors and the electoral board requesting a change in the Darvills Precinct polling place from the Hunt Club to Mansons United Methodist Church ("Mansons Church") located approximately 3 miles southeast of the Hunt Club. The petition stated the desire of the signers that the polling place be "more centrally located." It also noted that Mansons Church had agreed to serve as the polling place and described it as "well lighted, good parking, [and] handicap accessable [sic]." The overwhelming number of signatures on the petition were of white residents from the communities of DeWitt and Rocky Run, located on the eastern side of the precinct. It appears that only three black persons signed the petition. We also understand, based on information from the general registrar, that 23 of the people who signed the petition were not registered in the Darvills Precinct, and only 18 of the 105 signatures were of persons who had voted at the Hunt Club in the 1998 election.

Following discussion of the petition, the board of supervisors scheduled a hearing to consider changing the polling place to Mansons Church. Just prior to that hearing, however, Mansons Church informed the board of supervisors that it was withdrawing its offer to serve as a polling place. At the hearing, the board of supervisors authorized the placement of an advertisement for a public hearing on changing the Darvills polling place "if a suitable centrally located location can be found prior to July 15, 1999." On July 12, 1999, Bott Memorial Presbyterian Church ("Bott Church") offered its building for use as a polling place. Bott Church is located at the extreme eastern end of the Darvills Precinct and has an overwhelmingly white congregation. At a hearing on August 4, 1999, the board of supervisors adopted a resolution changing the polling place for the Darvills Precinct to Bott Church.

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. 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 connection with our consideration of whether the proposed change will have a retrogressive effect on minority voters in the Darvills Precinct, we have examined Census data for the area of the county within the boundaries of the precinct and have sought information from county officials and others regarding the distribution of minority residents within the precinct. The 1990

Census data indicates that a significant majority of black precinct residents live in the western portion of the precinct. While the 1990 data show some black population in the eastern part of the precinct, our research suggests that it has been significantly reduced since that time. Although we have had no difficulty in contacting minority persons in the western portion of the precinct, we have experienced serious difficulty in contacting minority residents in the eastern portion of the precinct, despite significant effort on our part. Neither county officials, nor minority residents in the western portion of the precinct have been able to provide us with reliable information regarding names or telephone numbers of minority citizens in the eastern portion of the precinct. Thus, because our most reliable information is that the black population is heavily concentrated in the western part of the precinct, it appears that the proposed polling place change will impose a significantly greater hardship on minority voters than white voters. The county has provided no information that would show that the polling place move will not have this disparate impact.

The standards for determining whether government action is motivated by a discriminatory purpose were established by the Supreme Court in Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266-68 (1977). The Court directed that consideration be given, in particular, to whether the official action "bears more heavily on one race than another"; the "historical background of the [jurisdiction's] decision"; the "specific sequence of events leading up to the challenged decision"; "[d]epartures from the normal procedural sequence" and "substantive departures"; and "[t]he legislative or administrative history," especially "contemporary statements by members of the decisionmaking body."

We have already discussed how the proposed polling place change bears more heavily on blacks than whites. The historical background reveals that for many years, voters in the Darvills precinct voted at the Community Center, located in the western part of the precinct. When that location was destroyed by fire the county electoral board recommended that the Hunt Club be selected, and the board of supervisors agreed. The sequence of events leading up to the decision to change the polling place to Bott Church tends to show a discriminatory purpose. The decision was made after the Darvills polling place was changed to a location operated by black persons, and after submission of a petition seeking a change that was signed almost exclusively by white citizens. Moreover, the Bott Church's congregation is almost exclusively white. Procedural and substantive departures from the normal practice also tend to show a discriminatory purpose. The board of supervisors discounted the recommendation of the electoral board to retain the Hunt Club and, substantively, the desire for a central location, articulated by

both the county and the petitioners as the preeminent criterion, was immediately abandoned when the Bott Church site became available.

We have also considered other alleged deficiencies in the Hunt Club that have been asserted by county officials or private individuals and have found them to be insubstantial.

In light of the considerations discussed above, I cannot conclude that your burden to show that the proposed change has neither a discriminatory purpose nor will have a discriminatory effect has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the polling place from the Cut Bank Hunt Club to the Bott Memorial Presbyterian Church.

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 neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 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 Court is obtained, the polling place change continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Our determination in this matter in no way reflects any conclusion that Dinwiddie County may not properly consider convenience to voters as a valid criterion for designating polling places. Our concerns are that such decisions be made in a way that does not disadvantage or intentionally discriminate against minority voters. Realigning or subdividing existing precincts or establishing additional precincts and polling places may well provide options for the county to achieve voter convenience while avoiding disadvantaging minority voters. There may be additional options as well.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Dinwiddie County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), Special Section 5 Counsel in the Voting Section.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division