U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 19, 2003

Bruce D. Jones, Jr., Esq.
County Attorney
P.O. Box 690
Eastville, Virginia 23347-0690

Dear Mr. Jones:

This refers to the 2002 redistricting plan for the board of supervisors and the realignment of voting precincts for Northampton 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 February 10, 2003, request for additional information through March 21, 2003.

With regard to the redistricting plan, we have considered carefully the information provided, as well as information in our files, census data, and comments from other interested persons. According to the 2000 Census, Northampton County has a population of 13,093, of whom 43.1 percent are black persons, and 3.5 percent are Hispanic. From 1990 to 2000, the county's total population remained virtually unchanged, while the black percentage of the total population decreased slightly, from 46.2 percent to 43.1 percent.

Our analysis of the county's electoral history indicates that prior to 1991, only two black candidates had ever been elected to the board and their success came only with reliance on single-shot voting. Further, under the benchmark plan, black voters had been able to elect candidates of choice in three districts. In two of the benchmark districts, black persons are a majority of the voting age population [VAP]. The proposed plan has no district in which black persons constitute a majority of the VAP. In the third viable district in the benchmark, black residents constitute 47.8 percent of the VAP with all minority residents totaling 52.8 percent of that population. Under the proposed plan, the combined minority voting population is 50.3

percent. In the three benchmark districts, the lowest overall minority VAP percent is 52.8, whereas the highest combined minority VAP in any district in the proposed plan is 52.1 percent.

The county bases its determination that black voters will continue to have the ability to elect candidates of their choice in three of the six districts under the proposed plan on the "evidence that voters in Northampton County do not vote on purely racial grounds." In support of this conclusion, the county relies on four black-white races from 1983, 1987, and 1988, purporting to show that "at least some African-American voters were willing to vote for white candidates" and that "at least some white voters were willing to vote for an African-American candidate."

Our electoral analysis of these and other elections precludes us from reaching a similar conclusion. First, two of the elections relied upon by the county, which were county-wide elections in 1987, in fact, did suggest racial bloc voting. The analysis evidenced overwhelming support by black voters for black candidates and very little white support of those candidates by white voters (3% in one race and 7.2% in another). The other two elections relied on by the county were the races in 1983 and 1987 in which Mr. Godwin (B) successfully ran for the board of supervisors. Although Mr. Godwin does appear to have received support from some white voters, the significance of the 1987 victory to the county's position is diminished significantly by the fact that there were only two candidates running for two seats. In any event, the county's assertion that there is some level of cross-over voting does not mean that, as a general matter, white voters do not vote as a bloc to defeat black-preferred candidates in Northampton County. As noted above, our analysis did not indicate a total absence of white support for black-preferred candidates, only that the level of such support was, in most instances, minimal, at best.

The election patterns within the county since 1991 do not alter our view. In the last ten years, no black-preferred candidate has won in a district in which whites were a majority of the VAP and in the district in which neither blacks nor whites constitute a majority of the total VAP, a black-preferred candidate has only won once in the past three elections.

The analysis of electoral behavior indicates that a reduction of only a few percentage points has the potential for a significant difference in the outcome. Accordingly, the county

has not established that a plan that unnecessarily reduces the black population percentage in these districts will afford them the same ability to elect candidates of choice that they now have.

The county has also suggested any retrogression was unavoidable because the county's black VAP percentage dropped 2.4 points since 1990, and is now 40.6 percent. We have examined the county's argument and have determined that it does not withstand scrutiny.

First, the county's proposed plan does not even maintain black voting strength in two of the six districts, much less the three existing districts. Even considering black and other minority voters together, the plan presently before us results in a retrogression of black voting strength. Second, as we informed you on September 28, 2001, during our review of the county's 2001 redistricting plan, we devised an illustrative plan that was not retrogressive as one means of determining whether the retrogression that we discovered in your plan was avoidable. *Guidance Concerning Redistricting and Retrogression under Section 5 of the Voting Rights Act of 1965*, 42 U.S.C. 1973c, 66 Fed. Reg 5411, 5413 (January 18, 2001).

We have discussed that plan with you on several occasions since that time. As you know, the purpose of the illustrative plan is only to indicate that a non-retrogressive plan is possible and the county has no obligation to consider the illustrative plan for any purpose other than that. However, the reasons provided by the county for not adopting a non-retrogressive plan similar to the illustrative plan are not persuasive. The county has indicated that certain features in the illustrative plan (for example, the distances some voters must drive to vote) make the plan, in its view unacceptable; however, it concedes that these same features exist in its proposed plan, the benchmark plan, or both. Moreover, following the April 10, 2002, meeting with Departmental employees, at which the county identified, for the first time, several unincorporated areas whose boundaries, although somewhat vague, could not be split by district lines, we revised the illustrative plan to address each of the concerns raised regarding community boundaries, and developed a plan with black VAP percentages similar to those in the benchmark. Thus, despite the various

restraints that the county is operating under, the retrogression that would result from implementation of the 2002 plan is avoidable.

Under these circumstances, I am unable to conclude as I must under Section 5, that the county has met its burden of demonstrating that the redistricting plan does not have a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R 51.52. Therefore, on behalf of the Attorney General, I must object to the 2002 redistricting plan for the board of supervisors of Northampton 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 neither have 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 submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

The Attorney General will make no determination regarding the submitted realignment of voting precincts because it is dependent upon the objected to redistricting plan.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Northampton County plans to take concerning this matter. If you have any questions, you should call Mr. Robert P. Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General