U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 27, 2002

Mr. Charles T. Edens
Chairperson, County Council
13 East Canal Street
Sumter, South Carolina 29150

Dear Mr. Edens:

This refers to the 2001 redistricting plan for Sumter 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 March 12, 2002, request for additional information on April 29, 2002.

We have considered carefully the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the county's previous submissions. Based on our analysis of the information available to us, I am compelled to object to the submitted redistricting plan on behalf of the Attorney General.

The 2000 Census indicates that Sumter County has a population of 104,646, of whom 46.6 percent are black. The county council consists of seven members elected from single-member districts to serve four-year, staggered terms.

Under 2000 Census data, four of the seven districts in the current, or benchmark, plan have both total and voting-age populations that are majority black. In three of these four, black voters will continue to have the ability to elect candidates of their choice. Our analysis, however, shows that this is not true for the fourth district, District 7. Under the benchmark plan, black voters in that district have the ability to elect their candidates of choice, and they will not have that same ability under the proposed plan, which decreases the black total population by 8.7 percentage points to 54.2 percent and the black voting-age population by 9.6 percentage points to 49.3 percent.

Our analysis shows that elections within District 7 are marked by a pattern of racially polarized voting. Moreover, we analyzed several county-wide elections to determine whether black voters would have the present ability to elect candidate of choice under the benchmark plan District 7. We determined that, while under the benchmark plan black voters did indeed have the ability to elect a candidate of choice, under the proposed plan they would not; analysis of two prior elections demonstrates that under District 7 as configured under the proposed plan, the black candidate of choice would lose, or at best win by an extremely narrow margin. Accordingly, the implementation of the proposed plan will result in a retrogression in the minority voters effective exercise of their electoral franchise.

This retrogression was avoidable. Our analysis of the information submitted indicates that the reduction of the black population percentage in District 7 was not required to comply with the county's stated redistricting criteria. First, the district had the lowest deviation of all districts and did not require any modification. Second, the county's own consultant presented an alternative plan, Version 1, which satisfied the county's initial redistricting criteria and maintained the demographics of the benchmark district.

A proposed change has a discriminatory effect when it will "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 125, 141 (1976). If the proposed plan materially reduces the ability of minority voters to elect candidates of their choice to a level less than what they enjoyed under the benchmark plan, preclearance must be denied. State of Georgia v. Ashcroft, 195 F.Supp 2d. 25 (D.D.C. 2002). In Texas v. United States, the court held that "preclearance must be denied under the 'effects' prong of Section 5 if a new system places minority voters in a weaker position than the existing system." 866 F.Supp. 20, 27 (D.D.C. 1994).

With respect to the county's ability to demonstrate that the plan was adopted without a prohibited purpose, as noted above the retrogressive effect was easily avoidable. The county was not compelled to redraw the district, and even if it wished to do so, the county was presented with an alternative that met all of its legitimate criteria while maintaining the minority community's electoral ability in District 7, an alternative the county rejected. Moreover, it appears that during the redistricting process the county council explicitly decided to pursue a "3-3-1" plan, i.e., to eliminate one of the four existing majority

minority districts in favor of a "neutral district," more similar to the county's redistricting configuration after implementation of the 1992 redistricting plan. In these circumstances, we cannot conclude that the county will be able to sustain its burden, as it must, that the action in question was not motivated by a discriminatory intent to retrogress.

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); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); 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 that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan.

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 changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Sumter County plans to take concerning this matter. If you have any questions, you should call Ms. Judith Reed (202-305-0164), an attorney in the Voting Section. Refer to File No. 2001-3865 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General