U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

SEP 3 2002

C. Havird Jones, Jr., Esquire
Senior Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549

Dear Mr. Jones:

This refers to Act R.192 (2002), which provides the redistricting plan, the method of staggering terms, and the implementation schedule for the Union County School District in Union 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 June 17, 2002, request for additional information through August 20, 2002.

We have carefully considered the information you have provided, as well as information in our files, census data, and information and comments from other interested persons. In light of the considerations discussed below, I cannot conclude that your burden under Section 5 of the Voting Rights Act has been sustained in this instance. Therefore, on behalf of the Attorney General, I am compelled to object to the 2002 redistricting plan.

The 2000 Census indicates that Union County School District has a population of 29,881, of whom 9,291 (31.1%) are black persons. The board of trustees consists of nine members elected from single-member districts to four-year staggered terms. Elections are nonpartisan, plurality-win contests conducted at the same time as the general election in even-numbered years. Under 2000 Census data, two of the nine districts in the benchmark plan have both total and voting-age populations that are majority black, Districts 1 and 7. Available information is that prior to the adoption of the benchmark plan in 1989, no black candidates had been elected to the board of trustees. Since the 1989 plan was implemented in 1990, our analysis indicates that Districts 1 and 7 have often elected candidates of choice for black voters to the board of trustees. The proposed plan would drop District 1 by roughly four points in the black share of the total and voting age population, and would drop

District 7 by roughly seven points in the black share of the total and voting age population.

Our review of the benchmark and proposed plans, as well as alternative plans introduced in the legislature, suggests that the magnitude of the reductions in black voting age population percentages in Districts 1 and 7 in the proposed plan was neither inevitable nor required by any constitutional or legal imperative; alternative redistricting approaches available to the State avoided significant reductions in black voting strength while adhering substantially to the State's redistricting goals as presented in your submission. The State's failure to account fully for not considering these alternatives implies an intent to retrogress. Further, should the State believe that such an altered plan conflicts with its redistricting goals, we note that "compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria." Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412 (Jan. 18, 2001).

Also revealing is the fact that, in contrast to the process which led to the 1989 benchmark plan, the proposed plan here was developed without any formal public hearings in the county, and without any opportunity for black members of the local board of trustees and the local black community to voice what we understand to be considerable concerns regarding the plan, resulting in an atmosphere of secrecy. Moreover, the State failed fully to comply with our repeated requests for further information concerning electoral contests between black and white candidates, and for certain information omitted from the original submission, including the transcript of the one legislative debate in which the potentially retrogressive effect of the submitted plan was discussed.

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); Beer v. United States, 425 U.S. 125 (1976); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Analysis of the question of whether the proposed plan is motivated by an intent to retrogress is guided by the factors set forth in Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977).

In light of the considerations discussed above, I cannot conclude that the State has sustained its burden that the proposed plan was not motivated by a discriminatory intent to cause a retrogression in minority voters' effective exercise of the electoral franchise. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan for Union County School District.

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.

Because the change in the method of staggering terms and the implementation schedule are dependent upon the objected-to redistricting plan, it would be inappropriate for the Attorney General to make a preclearance determination on them. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of South Carolina plans to take concerning the redistricting for the Union County School District. If you have any questions, you should call Mr. Chris Herren (202-514-1416), an attorney in the Voting Section. Refer to File No. 2002-2379 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General