

DJ 166-012-3
G8654
G9834-9835

June 17, 1983

William H. Ward, Esq.
Ward and Rogers
P. O. Drawer 59
Starkville, Mississippi 39759

Dear Mr. Ward:

This is in reference to the redistricting of supervisor and justice court districts and the polling place changes in Oktibbeha County, Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on March 14, 1983; supplemental information was received on March 23, 1983, and April 7 and 18, 1983.

We have given careful consideration to the information you have provided, as well as Bureau of the Census data and comments and information provided by other interested parties. In order to obtain the Section 5 preclearance requested, the county must demonstrate that the submitted voting changes "[do] not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)).

The 1980 Census reveals that the present supervisory districts are malapportioned, and the submitted supervisory redistricting plan is designed to remedy that malapportionment. In accomplishing this goal, however, our analysis shows that a primary purpose of the plan adopted by the board of supervisors was to divide the campus of Mississippi State University among several supervisory districts so as to limit the potential

voting strength of that institution's student population. Our analysis further reveals that a by-product of the distorted configuration adopted to accomplish that end is a diminution of the black voting strength which is concentrated to a large degree in the City of Starkville.

While a reapportionment plan adopted for the purpose of diminishing the voting strength of a jurisdiction's student population does not in and of itself violate Section 5, such intentional discrimination against students well may violate the Twenty-Sixth Amendment to the Constitution and Section 301 of the Voting Rights Act (42 U.S.C. 1973bb). United States v. State of Texas, 445 F. Supp. 1245 (S.D. Tex. 1978), aff'd, 439 U.S. 1105 (1979); Whatley v. Clark, 482 F.2d 1230 (5th Cir. 1973). Where, as here, such unlawful conduct results in so clear a discriminatory impact on a protected minority group, amended Section 2 the Voting Rights Act precludes preclearance under Section 5. This is particularly true since our analysis of the submitted factual information reveals additionally that if a reapportionment plan were drawn without regard to dividing the campus among several districts, the likely result would be a plan which enhances the voting strength of the black community. In fact, we understand that such a plan, offered by the NAACP, was rejected primarily because it did not divide the campus.

In these circumstances, I am unable to conclude that the county has satisfied its burden of demonstrating that the supervisors' reapportionment plan does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. Accordingly, on behalf of the Attorney General, I must interpose an objection to the plan.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General

reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the supervisors' redistricting plan legally unenforceable. See also 28 C.F.R. 51.9.

Concerning the redistricting of the justice court districts, the Attorney General interposes no objection. However, we feel a responsibility to point out that the failure to object does not bar any subsequent litigation to enjoin enforcement of the change. In addition, we note that the proposed plan apparently has been drawn to conform in some areas to the lines of the newly proposed supervisor districts. Since an objection to those districts is being interposed at this time, we wish also to note that should any remedial alteration in the supervisor district lines result in future changes in the justice court district boundaries, such changes will have to meet Section 5 preclearance requirements.

Inasmuch as the polling place changes are directly related to the supervisors' redistricting plan, the Attorney General will make no determination with respect to these related changes at this time. 28 C.F.R. 51.20(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Oktibbeha County plans to take with respect to this matter. If you have any questions, feel free to call Paul F. Hancock (202-724-3095), Assistant for Litigation of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division