



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

11 JUL 1983

John W. Whitten, Jr., Esq.
Attorney, Tallahatchie County
Board of Supervisors
P.O. Box 368
Sumner, Mississippi 38957

Dear Mr. Whitten:

This is in reference to the reapportionment of supervisor and justice court districts in Tallahatchie 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. Your submission was completed on May 10, 1983.

We have given careful consideration to the information you have provided, as well as the information and comments received from other interested parties. With respect to the reapportionment of justice court districts, the Attorney General does not interpose an objection. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

We are, however, unable to reach a similar conclusion with regard to the reapportionment plan submitted for supervisor districts in Tallahatchie County. Our analysis reveals that the submitted plan unnecessarily fragments black population concentrations in the City of Tutwiler and the Glendora Precinct. In the context of the voting patterns that exist in the county, this fragmentation adversely impacts upon black voting strength in Supervisor Districts 4 and 5, the only districts in which black citizens would have had a reasonable opportunity to elect candidates of their choice, since these areas appear to have provided the greatest support for black candidates in previous elections. Such fragmentation is probative of racial

purpose. Busbee v. Smith, 549 F. Supp. 494, 517 (D. D.C. 1982), aff'd, 51 U.S.L.W. 3552 (U.S. Jan. 24, 1983); Mississippi v. United States, 490 F. Supp. 569, 581 (D. D.C. 1979), aff'd, 444 U.S. 1050 (1980).

No satisfactory explanation has been offered as to why these population adjustments were necessary to satisfy the county's stated criteria and, in fact, the result is not the one that would have been expected had the county followed its stated objective of maintaining present district lines to the extent possible. In this regard, I note that the only current district which has a total population close to the ideal population size, requiring the removal of few, if any, persons in order to comply with the one-person, one-vote rule, is District 4, which has the most substantial black population percentage. Rather than remove a small portion of the population as would be expected under the stated criteria, the county removed a large number of persons from the district, in the Glendora Precinct, and then added persons on the district's eastern edge. This change added additional people to District 5, which presently is over-populated and which was required to lose population.

Our analysis reveals that it would have been much more in keeping with the county's criteria to have adopted a configuration that does not fragment the Glendora Precinct or the City of Tutwiler, thereby maintaining them in Districts 4 and 5, respectively, and keeping District 4 intact (except possibly for minor changes). This could have been accomplished without disturbing the district lines proposed for the eastern portion of the county. As the Supreme Court noted in Connor v. Finch, 431 U.S. 407, 425 (1977), "unexplained departures from the results that might have been expected to flow from the [county's] own neutral guidelines can lead * * * to a charge that the departures are explicable only in terms of a purpose to minimize the voting strength of a minority group." See also Busbee v. Smith, supra, 549 F. Supp. at 517.

That suggestion is particularly strong here, where the county's explanation for its submitted configuration rests on two stated objectives--i.e., equalization of road mileage and of assessed land valuation--that, from all appearances, are not met by the proposed redistricting. Indeed, under our analysis the county could have been more faithful to those two criteria if it had followed a perfectly logical redistricting course that left intact the concentrations of blacks in Glendora and

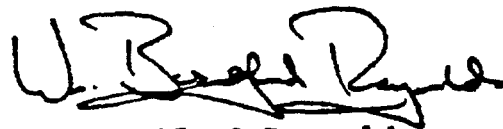
Tutwiler. We have yet to receive a plausible nonracial justification for its failure to do so. Nor have we been advised why the county resisted so strenuously efforts by the black community to participate in the reapportionment decision-making process. Such calculated inattention to the interests of so large a segment of the county population further reinforces the inference of purpose.

Under Section 5, the county bears the burden of showing that the new plan has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e) 51.26(e). In view of the considerations discussed above, I am unable to conclude that the county has met its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the reapportionment plan for supervisor districts in Tallahatchie County.

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 Tallahatchie County supervisor reapportionment plan legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Tallahatchie County plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5-Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division