U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

March 26, 1993

John A. Gregory, Esq.
Gore & Gregory
P.O. Box 466
Okolona, Mississippi 38860

Dear Mr. Gregory:

This refers to the 1992 redistricting plan for the board of supervisors in Chickasaw 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 response to our November 23, 1992, request for additional information on January 25, 1993.

We have considered carefully the information you have provided, as well as 1990 Census data, information contained in your submission of a 1989 redistricting plan, and information received from other interested persons. In 1989, the federal district court ruled that the county's 1983 supervisorial redistricting plan violated Section 2 of the Voting Rights Act, 42 U.S.C. 1973. Gunn v. Chickasaw County, 705 F. Supp. 315 (N.D. Miss. 1989). Under the 1983 plan, not one of the five districts had even a black population majority. The court found that there was "an extreme degree of racial polarization in elections in Chickasaw County," 705 F. Supp. at 320, and that no black person had been elected to the positions of county supervisor or county election commissioner. Ibid.

Thereafter, as a proposed remedy for the Section 2 violation, the county submitted for Section 5 review a redistricting plan to which we interposed an objection on February 27, 1990. While that plan had two districts with black population majorities (District 3 at 65.5% and District 4 at 55.8%), only one of those districts had a black voting age population majority. Our letter explained that the county's stated redistricting criteria were compatible "with the goal of protecting minority voting strength," but that the county's unexplained departure from these criteria resulted in a plan which failed "to eliminate fully the dilutive features of the

existing plan." We specifically noted our concerns that the manner in which the black share of the population appeared unnecessarily to be limited in District 4 indicated an intention "to minimize black voting strength." The county chose not to revise its plan in order to alleviate the concerns that prompted our objection.

In 1991, the federal district court in Gunn adopted a plan drawn by a court-appointed special master as an interim plan for the 1991 elections for county supervisor and directed that all subsequent elections must be conducted pursuant to a redistricting plan precleared under Section 5. The special master's plan was drawn based upon the 1990 Census, which showed that the black share of the county's population had increased since 1980 from 36.0 to 38.6 percent. There were two districts with black population majorities (District 3 at 60.9% and District 1 at 50.2%) but the black share of the population in those districts was lower than in the two black population majority districts in the plan to which we had objected.

Our analysis of the 1991 elections for supervisor, particularly the three interracial contests in the Democratic Party Second Primary, indicates that they were characterized by racially polarized voting (a pattern consistent with the court's prior finding) and disproportionately lower participation by black voters compared to white voters. As a result, black voters were unable to elect candidates of their choice in any supervisor district under the court's interim plan. This information was, of course, not available to the court when the special master's plan was adopted, but was available to the county when it formulated the plan now before us.

Approximately eight months after the 1991 general election, the county began a new redistricting process with the reemployment of the same demographers and the reappointment of the biracial committee. After several months, the end result was essentially the adoption of the special master's plan, only slightly modified. Although experience had shown the special master's plan to be ineffective in curing the Section 2 violation found by the court, the only change made was to modify the boundary between Districts 1 and 5, increasing the black voting age percentage in District 1 from 46 to 48 percent. District 3, with its 55 percent black voting age population, was untouched. In adopting this plan, the board of supervisors rejected several alternatives drawn by its own demographers which not only had lower total population deviations, but also would have provided

increased opportunities for black voters to elect candidates of their choice. We note that one of these was described earlier by the court as consistent with the county's redistricting criteria and possibly "offer[ing] the best hope for a long-lasting solution for the county." Gunn v. Chickasaw County, slip op. at 21 (N.D. Miss. Jul. 18, 1991). Although we have asked the county to explain its rejection of alternative plans, it has failed to do so. Nor has it demonstrated, in the context of its electoral history and racially polarized voting patterns, that the proposed plan fairly reflects black voting strength in the county.

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. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, a submitted change may not be precleared if its implementation would lead to a clear violation of Section 2 of the Act. See 28 C.F.R. 51.55. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1992 redistricting plan for Chickasaw 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 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, you may 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 1992 redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Chickasaw County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Since the Section 5 status of the proposed redistricting plan is a matter before the court in Gunn v. Chickasaw County, we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Glen H. Davidson
United States District Judge

Counsel of Record

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

November 8, 1993

James S. Gore, Esq.
Gore & Gregory
P.O. Box 367
Houston, Mississippi 38851

Dear Mr. Gore:

This refers to your request that the Attorney General reconsider the March 26, 1993, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1992 redistricting plan for the board of supervisors in Chickasaw County, Mississippi. We received your request on September 8, 1993.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, along with the other information in our files and comments from other interested persons. Our analysis of your original submission showed that, according to the 1990 Census, black residents constitute 38.4 percent of the county's total population and 33.8 percent of the voting age population. We found that county elections were characterized by an extreme degree of racial polarization and that black voters had been unable to elect their preferred candidates to the board of supervisors. Our observations regarding the degree of polarized voting in county elections and the lack of electoral success by the candidates of choice of the black community confirmed similar findings by the federal district court in Gunn v. Chickasaw County, 705 F. Supp. 315 (N.D. Miss. 1989), in its ruling that the county's 1983 redistricting plan violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

We have interposed objections under Section 5 to the county's first two attempts to cure the Section 2 violation found by the court. Following our first objection in 1990, the court adopted an interim redistricting plan for use only in the 1991 county supervisor elections. That plan, drawn by a special

master, produced two districts with black population majorities, but decreased the black share of the population in both districts to percentages below those in the black majority districts in the plan to which we objected in 1990. After the 1991 elections, in which the black voters' candidates of choice were defeated in the black-majority districts, the county adopted the interim plan with only slight modifications as its permanent redistricting plan and submitted it for Section 5 review. Our analysis of that plan showed that it did not effectively cure the Section 2 violation and, in light of the county's electoral history as well as racially polarized voting patterns, did not fairly reflect minority voting strength in the county.

Your reconsideration request acknowledges that the 1991 county supervisorial elections were marked by racially polarized voting and lower turnout levels for black voters than for white voters. Nevertheless, you suggest that a review of election returns for four municipal elections in the cities of Okolona and Houston supports the county's position that elections in Chickasaw County are not characterized by racially polarized voting. We have examined these results and have concluded that they do not refute available evidence that racially polarized voting continues to characterize elections in the county, particularly elections for county office. Accordingly, the submitted municipal election returns do not form a basis for withdrawing our objection.

The county also argues that our objection was unwarranted because it was based on a preference for an alternative to the objected-to redistricting plan. This argument mistakes the basis for objection. As described in our objection letter, the circumstances surrounding the adoption of the plan, including the county's choice from among available alternatives, left us unable to conclude that the county had demonstrated that the objected-to plan was free of a racially discriminatory purpose. Our objection does not require the county to adopt any particular alternative redistricting plan, and the county remains free to adopt any plan that it chooses so long as it does not violate the Voting Rights Act.

In light of these considerations, I remain unable to conclude that Chickasaw County has carried its burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, as

previously noted, a submitted change may not be precleared if its implementation would lead to a clear violation of Section 2 of the Act. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the 1992 redistricting plan.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change is legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (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 Chickasaw County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Since the Section 5 status of the 1992 redistricting plan is the subject of ongoing litigation in Gunn v. Chickasaw County, we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

James P. Turner
Acting Assistant Attorney General
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cc: Honorable Glen H. Davidson
United States District Judge

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