U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

16 AUG 1982

William H. Seals, Esq.
Marion County Attorney
P. O. Box 1041
Marion, South Carolina 29571-1041

Dear Mr. Seals:

This is in reference to the redistricting of councilmanic districts (Act No. R345 (1982)) in Marion County, South Carolina, 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 of supplemental information was received on June 16, 1982.

We have given careful consideration to the information you have supplied as well as that available from our files, the Bureau of the Census and other interested parties. At the outset, we note that the information submitted is not sufficient to show that the plan is not racially discriminatory. Figures showing the current population for the existing districts (e.g., under the 1980 Census) have not been provided. In a July 27, 1982, telephone conversation with Samuel D. Reyes of our staff, County Administrator Beeson indicated that this information was not available because Census Enumeration Districts were not split.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or 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. 51.38). In failing to provide the aforementioned information you have failed to sustain your burden of showing that the proposed reapportionment plan is not retrogressive under Beer v. United States, 425 U.S. 130 (1976).

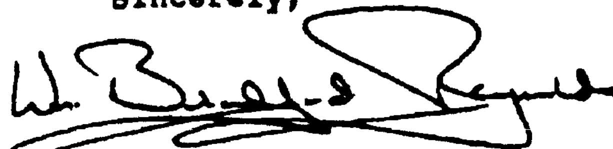
Since comparison with the existing plan is not possible, in our view the effect of the proposed plan on black voting strength under Beer must be measured against "properly apportioned single-member district plans." Wilkes County, Georgia v. United States, 450 F. Supp. 1171, 1178 (D. D.C.), aff'd, 439 U.S. 999 (1978). Our analysis reveals that under the proposed plan, and in the context of racial bloc voting that seems to exist in Marion County, blacks are likely to be able to elect representatives of their choice to the county council in only two of the seven councilmanic districts even though they comprise a majority of the county's residents. Our analysis further shows that under a fairly apportioned plan blacks likely would be able to elect representatives of their choice from at least three districts. In addition, it appears that the proposed plan unnecessarily fragments the black community in the City of Marion.

Under these circumstances, I am unable to conclude, as I must under the Voting Rights Act, that the newly devised districts do not have the purpose or effect of discriminating on account of race. Accordingly, on behalf of the Attorney General, I must interpose an objection to the submitted redistricting.

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, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the submitted reapportionment plan legally unenforceable. See also 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 Marion County plans to take with respect to this matter. If you have any questions concerning this letter, please 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

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25 APR 1983

William H. Seals, Esq.
Marion County Attorney
P.O. Box 1041
Marion, South Carolina 29571-1041

Dear Mr. Seals:

This is in reference to your request that the Attorney General reconsider his August 16, 1982, objection under Section 5 of the Voting Rights Act of 1965, as amended, to the redistricting of councilmanic districts (Act No. R345 (1982)) in Marion County, South Carolina. Your letter was received on August 31, 1982; supplemental information was received at your meeting of September 23, 1982, with members of my staff and subsequently on October 7, 1982.

We have considered carefully the information and comments presented in connection with your request for reconsideration. In particular, we have noted the comments and observations of the black councilmembers in support of the plan and their views that racial bloc voting does not now exist to the extent we thought likely at the time of our objection. We also note that the black candidate who won the primary in 50-percent black District 5 shares the view of the black councilmembers that racial bloc voting is no longer the phenomenon we had thought it to be in Marion County elections.

In view of these considerations, I find the concerns which led to the objection sufficiently allayed to warrant a change of that determination at this time. Accordingly, the objection is withdrawn. 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).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division