



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 10, 1984

C. Havird Jones, Jr., Esq.  
Assistant Attorney General  
P. O. Box 11549  
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to Act No. R1400 (1966), which provides for a seven-member County Board of Education with three members appointed by the Governor and two members elected from each of two double-member districts (Road Districts Nos. One and Two) to four-year staggered terms, and to Act No. R1008 (1972), which provides for a change in the method of electing these board members from the method provided for in R1400 (1966) to election from one of the four single-member or multi-member districts created for this purpose in Newberry 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. The initial submission of Act No. R1008 (1972) was received on May 8, 1972. The initial submission of Act No. R1400 (1966) as well as additional information on Act No. R1008 (1972) was received on June 13, 1983. Additional information on both Acts was received on July 12, 1984.

We have considered the information you have provided, as well as Bureau of the Census data and information furnished by other interested parties. We note that Newberry County has a population of 31,242, of whom 9,872 (or 31.6%) are black, that prior to 1966, there were eight members on the County Board of Education appointed by the Governor and that no black ever has been elected to a position on the board. With regard to Act No. R1400 (1966), we note at the outset that the districting plan for the implementation of the provisions of that Act was enacted in June, 1968 (Act No. R970), and that the one person - one vote requirement was not considered in the drawing of that districting plan. Although Act No. R970 never has been submitted for Section 5 review, the information you have provided indicates that the double-member districts provided in that plan are severely malapportioned.

While such malapportionment raises considerations under the Fourteenth Amendment which are not per se of concern under Section 5, such is not the case where, as here, there is an extreme underrepresentation in the district which contains the large majority of the minority population.

With regard to Act No. R1008 (1972), we note that no data was provided in response to our June, 1972 request for several items, including the population and number of registered voters, by race, for the old and new districts. This information is basic to a review of an election plan and is especially significant in a county, such as yours, which has in place, and elects its governing body from, single-member districts, one of which contains a black population majority, since that fact evidences a readily available alternative which would recognize the potential of minorities to elect a candidate of their choice to the Board of Education.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a 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 this regard, we have noted your statement that no population data were generated for the 1972 plan. However, in view of your failure to provide the Attorney General with any information which would allow for a proper evaluation of that plan, and in view of the other circumstances discussed above, we cannot conclude that your burden has been sustained in this instance with respect to either plan. Therefore, on behalf of the Attorney General, I must object to the implementation of the provisions of Acts Nos. R1400 (1966) and R1008 (1972).

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 these changes have 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 objections. However, until the objections are withdrawn, or judgments from the District of Columbia Court are obtained, the effect of the objections by the Attorney General is to make the implementation of the provisions of both Acts 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 the State of South Carolina plans to take with respect to these matters. 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,

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds", with a horizontal line drawn underneath the name.

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division



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C. Havird Jones, Jr., Esq.  
Assistant Attorney General  
P. O. Box 11549  
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to your request that the Attorney General reconsider the September 10, 1984, objection under Section 5 of the Voting Rights Act of 1965, as amended, to Act No. R1008 (1972), which provides for the election of the seven-member County Board of Education from the four single-member and multimember districts created for this purpose in Newberry County, South Carolina. We understand that you do not seek reconsideration of the objection also interposed on September 10, 1984, to Act No. R1400 (1966). We received your initial request on September 20, 1984; supplemental information was received on September 24, 1984.

We have reviewed carefully the information that you have provided to us, as well as comments and information received from other interested parties. Our analysis indicates that in the four districts created by Act No. R1008 to elect the members of the county board of education, blacks comprise approximately 31 percent, 43 percent, 30 percent, and 20 percent of the population, respectively. Under the 1980 Census, the deviations in the population of the proposed districts is in excess of + 31 percent and the districts in which the underrepresentation occurs are the districts which contain the largest proportions of blacks.


We still have been provided no justification, particularly one unrelated to race, for the continued use of a starkly malapportioned electoral scheme which necessarily operates to deny a significant portion of the minority community equal access to the political process. Withdrawal of the Attorney General's

objection in these circumstances would serve to countenance the very result that Section 5 of the Voting Rights Act was intended to prevent. Since the county still has not met its burden of showing that Act No. R1008 (1972) is free of a discriminatory purpose or effect, I must, on behalf of the Attorney General, continue the objection.

Of course, Section 5 permits you 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, irrespective of whether the change previously has been objected to by the Attorney General. As previously noted, however, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General to Act No. R1008 (1972), as well as to Act No. R1400 (1966), for which you did not request reconsideration, is to render the changes involved 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 the State of South Carolina plans to take with respect to this matter. If you have any questions, feel free to call Robert S. Berman (202-724-8388), Attorney Supervisor of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division