

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 18, 1988

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

Dear Mr. Jones:

This refers to Act No. R296 (1987) which provides for a districting plan for School District No. 4 and the abolishment of the county board of education; and Act No. R293 (1987) which affects the powers and duties of the school boards and the county council in Dorchester 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. We received the information necessary to complete your submission on May 17, 1988.

We have reviewed carefully all of the information that you have provided as well as that provided by other interested individuals and information already in our files. With regard to Act No. 296 (1987) which abolishes the county board of education, the Attorney General does not interpose any 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. 51.41).

With regard to the districting plan for Consolidated School District No. 4, we are unable to reach a similar conclusion. Before the county consolidated school district Nos. 1 and 3, black voters had attained significant representation in both of those districts, having elected six of the seven members on the board of School District No. 3 and three of the seven members on the board of School District No. 1. Since the consolidation, the interim appointed board for the consolidated district is composed of four black members and three white members. However, the proposal for the consolidated school board which is to be elected in 1988 includes a districting plan in which only two of the five districts will afford black voters a realistic opportunity to

elect representation of their choice to office. Assuming the likelihood that one of the two appointed members will be black, the county's proposal nevertheless would reduce minority representation from four of seven members to three of seven members under circumstances which do not fully explain why such a reduction is necessary. Even though we have noted the county's assertion that this plan is the best that can be drawn without crossing Census enumeration district lines, our analysis suggests otherwise. Nor are we satisfied that the inability to conform to existing enumeration district lines provides an adequate justification for the retrogression of black voting strength in the present circumstances. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that submitted voting changes have no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52(a). In view of the observations noted above, I cannot conclude that the county has carried its burden. Accordingly, I must, on behalf of the Attorney General, interpose an objection to Act No. R296 (1987), to the extent that it provides for the districting plan.

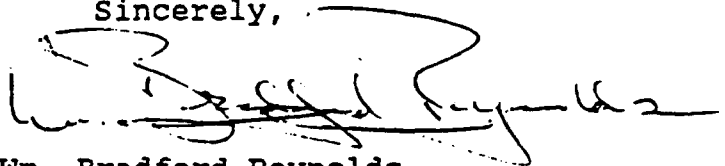
Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 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 districting plan legally unenforceable. 28 C.F.R. 51.10.

, With reference to Act No. 293 (1987), we cannot find a basis under Section 5 to object to the transfer of fiscal authority to the county council in light of our clearance of Act No. 296 (1987). At the same time, we are troubled by assertions that the county council's previous exercise of fiscal responsibility has been unresponsive to the needs of the

predominantly black school districts. Under Section 2 of the Voting Rights Act, any such behavior in the future by the council could well warrant close scrutiny to ascertain whether the transfer of fiscal authority has "result[ed]" in discrimination. That judgment must, of course, await the future action of the county council.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Dorchester County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (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", written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division