U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

April 23, 1990

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. R193 (1989) which provides for an increase in the number of board members from seven to nine, the change in method of election from seven members elected at large by numbered positions and residency districts to three members elected from three single-member districts and six members elected from two multimember districts without numbered positions or sub-residency districts, the districting plan, the change in the method of staggering the terms, and the implementation schedule for the board of education in Anderson 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 to complete your submission on February 20, 1990.

The Attorney General does not interpose any objection to the increase in the number of board members from seven to nine. 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 remaining changes, we have considered carefully the information you have provided, as well as information from other interested parties and from the 1980 Census. At the outset we note that the election results provided by the county indicate that racially polarized voting exists in Anderson County, and, as a result, black voters likely are unable to participate equally in the electoral process and elect candidates of their choice to office unless they constitute the majority of the population of an electoral district.

In that regard, under the proposed districting plan, black voters do not constitute a majority in any of the districts even though the black population is sufficiently large and geographically concentrated in and around the City of Anderson to permit the drawing of a black majority district. However, the county school district chose to submerge this black population concentration into a larger white electorate by placing it in a multimember district (proposed District 5) which will elect four members to the school board. To date, the county has offered no legitimate nonracial reason for providing that three of the five districts will be single-member districts while declining to draw single-member districts in the area of the county where the principal black population concentration is located.

Moreover, the proposed districting plan has a total deviation of 51 percent. While this is not a matter of primary concern under Section 5 if a plan otherwise fairly reflects minority voting strength, we note it here simply because our analysis indicates that readily discernible alternative single-member district plans, which would remedy this malapportionment, would include at least one district with a realistic black majority.

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 28 C.F.R. 51.52. In addition, a submitted change may not be precleared if its implementation would lead to a violation of Section 2 of the Voting Rights Act. 28 C.F.R. 51.55(b). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the proposed method of election and the districting plan under review meet these preclearance standards. Therefore, on behalf of the Attorney General, I must object to the proposed method of election and 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 unprecleared changes continue to be legally unenforceable. 28 C.F.R. 51.10.

With regard to the method of staggering the terms of office and the implementation schedule, the Attorney General is unable to make any determination since these changes are interrelated with the objectionable changes. 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action that Anderson County and the county school board plan to take with respect to this matter. If you have any questions, feel free to call Lora L. Tredway (202-724-8290), an attorney in the Voting Section. Refer to File Nos. Y9605-9606, Z1815-1816, and Z7433 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division