U.S. Department of Justice

Civil Rights Division

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

MAY 3[illegible] 1990

James E. Gonzales, Esq.
Gonzales & Gonzales
P.O. Box 10453
North Charleston, South Carolina 29411

Dear Mr. Gonzales:

This refers to the districting plan for the City of North Charleston in Charleston, Berkeley, and Dorchester Counties, 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 May 1, 1990.

We have considered carefully the information you have provided as well as comments and information received from other interested parties. At the outset, we note that since its incorporation in 1972, the city has been governed by an at-large elected city council, consisting of six councilmembers and the mayor. Under this system only one black person has been elected to city office although blacks constitute about a third of the city's population and numerous black candidates have offered for election. The city concedes in this submission that municipal elections are characterized by racially polarized voting and that, as a result, the current at-large method of election does not allow black voters an equal opportunity to elect candidates of their choice. Nevertheless, the city council made no effort to change the at-large system, until it was obliged to adopt a districting plan after local citizens initiated the change through a referendum election in order to obtain fair representation for the city's black residents.

In the plan proposed by the city council for electing the new eleven-member council, blacks constitute majorities in two of the ten proposed single-member districts. In the context of the prevailing pattern of polarized voting, the city concedes that black voters will have an opportunity to elect councilmembers only in those two districts. Thus, blacks will have a realistic opportunity to elect candidates of their choice to two of the eleven seats on the council. While such a change satisfies the

nonretrogression standard of Section 5, Beer v. United States, 425 U.S. 130 (1976), it also is necessary that the change be free of any discriminatory purpose. City of Richmond v. United States, 422 U.S. 358 (1975); Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), sum. aff'd, 459 U.S. 1166 (1983).

Our analysis indicates that districting options were readily available to the city which would allow for one or more additional black majority districts and thus would more fairly reflect black voting strength. Two aspects of the city's plan are implicated in this regard. First, the plan appears to minimize black electoral opportunity by fragmenting black neighborhoods, located in the southern area of the city, into white majority districts where blacks will not have an opportunity to elect councilmembers of their choice. Second, the city chose to combine the military base populations exclusively with white majority areas, although the base populations also adjoin the city's black neighborhoods and could as easily be combined with those neighborhoods to result in districts in which black voters are in the majority since, as we understand it, this military population is largely inactive in the local electoral process.

Our review has not indicated any valid, nonracial justification for unnecessarily limiting black voters to a realistic opportunity to elect representatives of their choice in only two districts. We understand that a primary goal of the districting plan is the city's apparent desire to preserve incumbencies. Although this goal does not, by itself, raise concern under the Voting Rights Act, it appears that the devices employed here to accomplish that goal were inextricably linked to minimizing black voting strength. See Ketchum v. Byrne, 740 F.2d 1398, 1408 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Finally, we note that while the city was under significant time pressure to adopt a districting plan, the city sought to meet the deadline by adopting a plan through a closed process which did not permit fair and open debate about the available districting alternatives, and foreclosed serious consideration of the views of minority residents.

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 light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city has carried its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted 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 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. 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 submitted change continues to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of North Charleston plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division