



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 3, 1994

C. Havird Jones, Jr., Esq.  
Assistant Attorney General  
Public Interest Litigation  
P. O. Box 11549  
Columbia, South Carolina 29211-1549

Dear Mr. Jones:

This refers to Act R.376 (1994), which provides for the change from a partisan to a nonpartisan election system, including candidate qualifying procedures and filing fees, for the board of trustees for the Georgetown County School District in Georgetown 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 your responses to our July 18, 1994, request for additional information on August 2, September 8, 12, 21, 22, and 23, 1994.

We have carefully considered the information you have provided, as well as Census data and information from other interested persons. According to the 1990 Census, the Georgetown County School District has a total population of 46,302, of whom 43.2 percent are black; black voters represent 35 percent of the registered voters. School board members are elected at large, by majority vote to staggered, four-year terms of office. Local elections are marked by an apparent pattern of racially polarized voting and significant disparities exist in socio-economic conditions that appear to hamper minority political participation.

Despite these obstacles, black voters have enjoyed a measure of success in electing candidates of their choice to the school board. Much of this success appears dependent, in the context of the at-large election system, upon the partisan nature of elections. Black-supported candidates that have been elected to the board of trustees were nominated in partisan primary elections in which black voters represented a larger percentage of the electorate than they represent in general elections, where trustees would be chosen under the proposed nonpartisan system. In addition, our analysis has revealed other advantages of the

partisan system for minority-supported candidates, including, for example, access to biracial forums and straight-ticket voting.

Implementation of nonpartisan elections, in the context of the at-large election system described above, appears likely to deprive black-supported candidates of meaningful partisan-based support and to exacerbate racial polarization between black and white voters, thereby diminishing the opportunity that would otherwise exist for black voters to elect their candidates of choice to the school board. See, e.g., Sierra v. El Paso Independent School District, 591 F.Supp. 802, 808-11 (W.D. Tex. 1984). Under these circumstances, the change to nonpartisan elections constitutes an impermissible retrogression in the position of the affected minority group in the political process, a situation that has the effect of denying or abridging the right to vote on account of race or color. See Beer v. United States, 425 U.S. 130 (1976).


We note, furthermore, that the views of the black community were not sought in advance of the change nor were the concerns voiced by black trustees about its racial impact heeded by the sponsors of Act R.376.

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. 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 your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change to nonpartisan elections for the school board occasioned by Act R.376 (1994).

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change to nonpartisan elections continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of South Carolina plans to take on behalf of the Georgetown County School District concerning this matter. In particular, we are aware that primary elections for school board seats were not conducted this year in anticipation of the change to nonpartisan elections in November 1994. In light of the objection interposed herein to nonpartisan elections, please inform us of the specific steps that will be taken to rectify this situation. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514 8690), an attorney in the Voting Section.

Sincerely,



Kerry Alan Scanlon  
Acting Assistant Attorney General  
Civil Rights Division