U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

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James R. Thompson, Esq.
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210 South Limestone Street, Suite 1
Gaffney, South Carolina 29340-3014

Dear Mr. Thompson:

This refers to the change in the method of election from single-member districts to at large for the Board of Public Works for the City of Gaffney in Cherokee County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our November 6, 1995, request for additional information on January 5, 1996.

We have considered carefully the information provided in this submission and in the submission of the 1994 change to single-member districts, as well as Census data and information and comments received from other interested persons. As you know, Section 5 preclearance was accorded the 1994 change in the method of election from at large to single-member districts on July 12, 1994.

The Board of Public Works is elected from an area that is coterminous with the City of Gaffney. According to the 1990 Census, black persons represent 39 percent of the City's total population (13,145) and 34 percent of its voting age population (9,631). These figures represent significant growth from the 1980 black population percentages (32 and 28 percent, respectively). The city's six member council is elected from single-member districts (two of which are majority-black). Currently, the Board's five commissioners are elected from single-member districts (two of which are majority black) to six year, staggered terms.

Conditions in the City of Gaffney are those found typically in areas in which black voters have had difficulty in electing candidates of choice under at-large methods of election.

Historically, black citizens have been subjected to discrimination in voting and related areas by the State of South Carolina, Cherokee County, and the City of Gaffney. Significant socio-economic disparities exist between black and white residents, suggesting that black persons continue to suffer from the lingering effects of that discrimination. These disparities have hampered their ability to participate in the political process. Racial tensions and hostilities are apparent in many of the interactions between black and white officials, See Transcripts of Board Meetings, July 18, August 1, September 5, 1995. And finally, elections in Gaffney appear to be characterized by a pattern of racially polarized voting. In every governmental entity in Cherokee County in which an at-large method of election has been employed, no more than one black official has ever served at any one time. Only after single-member districts were adopted has more than one black official been elected to any of these boards or councils.

Because these conditions limited the opportunity of black voters under the at-large system to elect candidates of choice, minority voters represented by the local NAACP requested that the Board change its method of election in 1994 to single-member districts. The NAACP presented a districting plan to the Board that we are told was drawn by taking into account visible boundaries such as roads and railroad tracks, compactness and contiguity of the districts, the protection of incumbents where possible, and recognition of minority voting strength (two of the five districts had majority-black populations). We understand that although no lawsuit had been threatened, the Board adopted the districting plan suggested by the NAACP because it believed it was necessary to comply with federal law and did not want to risk becoming embroiled in a lawsuit that might postpone the 1994 elections. Apparently, the commissioners believed that because most, if not all, of the governing entities in the County had adopted single-member districting plans, they would have to follow suit or risk being sued under Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

Despite the ameliorative nature of this change to a single-member districting plan, the Board of Public Works now seeks to return to its prior at-large method of election. Because readopting the at-large system will make it more difficult for minority voters to elect candidates of choice, the Board has not met its burden of showing that the proposed change will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

The Board claims that the at-large system was readopted because the NAACP considered race in the development of the existing districting plan and "contorted" those districts to create two that are majority-black in population. In the Board's

view, the existing single-member districting system therefore violates the Equal Protection clause of the Fourteenth Amendment as described in Miller v. Johnson, 115 S. Ct. 2475 (1995). We disagree that Miller stands for the proposition that race may never be a consideration in the adoption of a voting change or that majority-black districts may never be created, see Miller, 115 S. Ct. at 2488; see also DeWitt v. Wilson, 856 F. Supp. 1409 (E.D. Cal. 1994), aff'd in part and dismissed in part, 115 S.Ct. 2637 (1995) and note that the Board's attorney cautioned against such an expansive reading, see August 1, 1995, Board Meeting Transcript at p. 16-17.

The Board's reliance on the Miller decision as justification for the change appears pretextual. The commissioners readopted the at-large election system in 1995 despite the awareness gained during the 1994 deliberations on the change to single-member districts in which it became apparent that in Gaffney at-large election systems unnecessarily minimize the ability of black voters to elect candidates of choice. In this same vein, the commissioners appear to have ignored their attorney's interpretation of Miller and his caution not to be too quick to apply an untested decision. It appears that the commissioners ignored his advice because they wanted to prevent the 1996 elections in the two majority-black districts from going forward. Moreover, at least one commissioner stated that his reason for sponsoring the readoption of the at-large system is to avoid "minority" control of the Board.

In addition, it appears that the Board departed from its normal procedural sequence of holding public hearings and soliciting the views of the black community. In fact, the Board had no intention of making anyone, including the black community, aware of the proposal to return to the at-large system. Had it not been for the black commissioner and an alert member of the NAACP who noticed in a newspaper announcement that single-member districts were on the Board's agenda, it appears that the black community would have been unaware of the proposed plan to change the Board's method of election. Once the black community became aware of the Board's proposal to readopt an at-large system, they spoke publicly (e.g., in the newspaper and at board meetings) about the reasons why they believed that a return to an at-large system would worsen the electoral opportunities of black voters. However, without any discussion of the NAACP's concerns, the Board voted three to one, with one abstention, to return to the at-large system. The sole black commissioner on the Board voted against the proposed plan.

Thus, in light of the above facts and given the Board's awareness of the potentially retrogressive effect of the return to the at-large system, we cannot conclude that the Board has met its burden of proving that the proposal to return to the at-large system is free from a racially discriminatory purpose.

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); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. Nothing in the Supreme Court's holding in Miller alters this burden. Moreover, the mere existence of some legitimate, nondiscriminatory reasons for the voting change is insufficient to satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-68 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983).

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 readoption of the at-large method of election.

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 neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 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 an at-large method of election continues to be legally unenforceable. 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 Board of Public Works plans to take concerning this matter. If you have any questions, you should call Colleen M. Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division