U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

Tiare B. Smiley, Esq.
Special Deputy Attorney General
P.O. Box 629
Raleigh, North Carolina 27602-0629

DEC 18 1991

Dear Ms. Smiley:

This refers to Chapter 675 (1991), which provides for the 1991 redistricting and a change in the method of election from 42 single-member districts and 30 multimember districts to 75 single-member districts and 20 multimember districts for the House of Representatives; Chapter 676 (1991), which provides for the 1991 redistricting plan and a change in the method of election from 22 single-member districts and 28 multimember districts to 34 single-member districts and 8 multimember districts for the Senate; and Chapter 601 and Chapter 761 (1991), which provide for the increase from eleven to twelve congressional districts and the 1991 redistricting plan for the congressional districts for the State of North 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 response to our request for more information on November 5, 1991; supplemental information was received on November 18, 20, 21, 25, 26 and 27, and December 4, 10, 12 and 13, 1991.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. At the outset, we note that 40 of North Carolina's 100 counties are covered under the special provisions of Section 5 of the Voting Rights Act. As it applies to the redistricting process, the Voting Rights Act requires the Attorney General to determine whether the submitting authority has sustained its burden of showing that each of the legislative choices made under a proposed plan is free of racially discriminatory purpose or retrogressive effect and that the submitted plan will not result in a clear violation of Section 2 of the Act. In the case of statewide redistrictings such as the instant ones, this examination requires us not only to review the

overall impact of the plan on minority voters, but also to understand the reasons for and the impact of each of the legislative choices that were made in arriving at a particular plan.

In making these judgments, we apply the legal rules and precedents established by the federal courts and our published administrative guidelines. See, e.g., 28 C.F.R. 51.52(a), 51.55, 51.56. For example, we cannot preclear those portions of a plan where the legislature has deferred to the interests of incumbents while refusing to accommodate the community of interest shared by insular minorities, see, e.g., Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985); or where the proposed plan, given the demographics and racial concentrations in the jurisdiction, does not fairly reflect minority voting strength. Thornburg v. Gingles, 478 U.S. 30 (1986); Hastert v. State Board of Elections, ____ F. Supp. ____ (N.D. Ill., Nov. 6, 1991), 1991 WL 228185; Wilkes County, Georgia v. United States, 450 F. Supp. 1171, 1176 (D.D.C. 1978), aff'd. mem., 439 U.S. 999 (1978).

Such concerns are frequently related to the unnecessary fragmentation of minority communities or the needless packing of minority constituents into a minimal number of districts in which they can expect to elect candidates of their choice. See 28 C.F.R. 51.59. We endeavor to evaluate these issues in the context of the demographic changes which compelled the particular jurisdiction's need to redistrict and the options available to the legislature. Finally, our entire review is guided by the principle that the Act ensures fair election opportunities and does not require that any jurisdiction guarantee minority voters racial or ethnic proportional results.

With this background in mind, our analysis shows that, in large part, the North Carolina House, Senate and Congressional redistricting plans meet the Section 5 preclearance requirements. Each plan, however, has particular problems which raise various concerns for us under the Voting Rights Act. We describe each of these problem areas separately below.

Respecting the House plan, the proposed configuration of district boundary lines in the following three areas of the state appear to minimize black voting strength: the Southeast area, involving Sampson, Pender, Bladen, Duplin, New Hanover, Wayne, Lenoir and Jones Counties; the Northeast area in which the state proposes to create District 8; and Guilford County.

In general, it appears that in each of these areas the state does not propose to give effect to overall black voting strength, even though it seems that boundary lines logically could be drawn to recognize black population concentrations in each area in a

manner that would more effectively provide to black voters an equal opportunity to participate in the political process and to elect candidates of their choice. Another factor which appears to adversely impact on minority voting strength, by limiting the number of majority minority districts, was the state's decision to manipulate black concentrations in a way calculated to protect white incumbents.

In the Southeast area of the state, the state was aware of the significant interest on the part of the black community in creating districts in which they would constitute a majority. In fact, alternatives providing for two additional black majority districts were presented to the legislature. Rather than using this approach to recognize black voting strength, however, the proposed plan submerges concentrations of black voters in several multimember, white majority districts. Our own analysis suggests that a number of different boundary line configurations may be possible which more fairly recognize black population concentrations and provide minority voters an opportunity to elect candidates of their choice in at least one additional district.

In the Northeastern portion of the state, District 8 seems to have been drawn in such a way as to limit unnecessarily the potential for black voters to elect representatives of their choice. In spite of the 58 percent black population majority, serious concerns have been raised as to whether black voters in this district will have an equal opportunity to elect their preferred candidate, particularly given the fact that only 52 percent of the registered voters in the district are black. Our analysis indicates that a number of different options are available to draw District 8 in a manner which provides blacks an equal opportunity to participate in the electoral process (e.g., including in District 8 black concentrations in adjoining districts).

Similarly, in Guilford County, the proposed plan fails to recognize black population concentrations, although reasonable configurations of boundary lines would permit an additional district that would provide black voters the opportunity to elect their candidates of choice. While we have noted the state's assertion that the division of the black community in Guilford County into several districts enhances black voting strength by providing black voters an opportunity to influence elections in additional districts, it appears that the plan in fact was designed to ensure the re-election of white incumbents. This conclusion is bolstered by what appears to be similarly motivated decisions of the legislature involving other areas of the state, such as in Mecklenburg County. There, the state drew two minority House districts, while the minority population appears to be sufficiently concentrated to allow for the drawing of three districts in which black voters would have an opportunity to

elect candidates of their choice. While we are aware that Mecklenburg is not a county subject to the preclearance requirements of Section 5, information regarding the choices of boundary line changes in the county is relevant to our review of the concern that purposeful choices were made throughout the redistricting processes that adversely impact minority voting strength.

Respecting the Senate redistricting plan, the state has proposed district boundary lines in the southeast region of the state that appear to minimize black voting strength, given the particular demography of this area. Although boundary lines logically could be drawn to recognize black population concentrations in a manner that would more effectively provide to black voters an equal opportunity to participate in the political process and to elect a candidate of their choice, the proposed districts seem to be the result of the state's decision to use concentrations of black voters in white majority districts to protect white incumbents. Black citizens from this area testified that they felt a black majority single-member district could be fairly drawn, and alternatives providing for a black majority district were presented to the legislature. It appears, however, that concentrations of black voters have been submerged in several white majority districts. Our own analysis suggests that a number of different boundary line configurations may be possible which more fairly recognize black population concentrations and provide minority voters an opportunity to elect candidates of their choice in at least one additional district.

Respecting the congressional redistricting plan, we note that North Carolina has gained one additional congressional seat because of an increase in the state's population. The proposed congressional plan contains one majority black congressional district drawn in the northeast region of the state. The unusually convoluted shape of that district does not appear to have been necessary to create a majority black district and, indeed, at least one alternative configuration was available that would have been more compact. Nonetheless, we have concluded that the irregular configuration of that district did not have the purpose or effect of minimizing minority voting strength in that region.

As in the House and Senate plans, however, the proposed configuration of the district boundary lines in the south-central to southeastern part of the state appear to minimize minority voting strength given the significant minority population in this area of the state. In general, it appears that the state chose not to give effect to black and Native American voting strength in this area, even though it seems that boundary lines that were no more irregular than found elsewhere in the proposed plan could have been drawn to recognize such minority concentration in this

part of the state. Jeffers v. Clinton, 730 F.Supp. 196, 207 (E.D. Ark. 1989), affirmed, 111 S. Ct. 662 (1991).

We also note that the state was well aware of the significant interest on the part of the minority community in creating a second majority-minority congressional district in North Carolina. For the south-central to southeast area, there were several plans drawn providing for a second majority-minority congressional district, including at least one alternative presented to the legislature. No alternative plan providing for a second majority-minority congressional district was presented by the state to the public for comment. Nonetheless, significant support for such an alternative has been expressed by the National Association for the Advancement of Colored People (NAACP) and the American Civil Liberties Union (ACLU). These alternatives, and other variations identified in our analysis, appear to provide the minority community with an opportunity to elect a second member of congress of their choice to office, but, despite this fact, such configuration for a second majority-minority congressional district was dismissed for what appears to be pretextual reasons. Indeed, some commenters have alleged that the state's decision to place the concentrations of minority voters in the southern part of the state into white majority districts attempts to ensure the election of white incumbents while minimizing minority electoral strength. Such submergence will have the expected result of "minimiz[ing] or cancel[ling] out the voting strength of [black and Native American minority voters]." Fortson v. Dorsey, 379 U.S. 433, 439 (1965). Although invited to do so, the state has yet to provide convincing evidence to the contrary.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance with respect to the three proposed plans under review. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting for the North Carolina State House, Senate and Congressional plans to the extent that each incorporates the proposed configurations for the areas discussed above.

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 1991 House, Senate and Congressional redistricting plans 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, you may request that the Attorney General reconsider the objections. However, until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the 1991 redistrictings for the North Carolina House, Senate and Congressional plans continue to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of North Carolina plans to take concerning these matters. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division