U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 21, 2003

Bruce D. Jones, Jr., Esq.
County Attorney
P.O. Box 690
Eastville, Virginia 23347-0690

Dear Mr. Jones:

This refers to the August 20, 2003, redistricting plan and the realignment of voting precincts for Northampton County, Virginia, submitted to the Attorney General, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 22, 2003.

We have considered carefully the information you have provided, as well as census data, comments from interested persons, and other information, including the county's previous submissions. As discussed further below, I cannot conclude that the county has sustained its burden under Section 5 with regard to the 2003 redistricting plan. Accordingly, on behalf of the Attorney General, I must object to the redistricting plan.

According to the 2000 Census, Northampton County has a population of 13,093, of whom 43.1 percent are black, and 3.5 percent are Hispanic. From 1990 to 2000, the county's total population remained virtually unchanged, while the black percentage of the total population decreased slightly, from 46.2 percent to 43.1 percent.

Under the Voting Rights Act, a jurisdiction seeking to implement a proposed change affecting voting, such as a redistricting plan, must establish that, in comparison with the status quo, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." See Beer v. United States, 425 U.S. 130, 141 (1976). In addition, the jurisdiction must establish that the change was not adopted with an intent to retrogress. Reno v. Bossier Parish School Board, 528 U.S. 320, 340 (2000).

Our examination of Northampton's plan shows that it will lead to a prohibited retrogression in the position of minorities with respect to their effective exercise of the electoral franchise by causing a net loss of one district in which the minority community would have the ability to elect its candidate of choice.

The benchmark plan contains two black majority districts in which black voters have been able to elect candidates of choice, Districts 3 and 6. The proposed plan has only one such district, District 6, and reduces the black voting age population in District 3 from 53.3% to 48.2%, thereby eliminating the ability of black voters to elect their candidates of choice.

When coupled with an analysis of election returns and other factors, we have concluded that minority voting strength has been unnecessarily reduced in Northampton County. Since retrogression is assessed on a county-wide basis, Northampton may remedy this impermissible retrogression either by restoring District 3 to a district where black voters can elect a candidate of choice or by creating a new viable majority minority district elsewhere in the County.

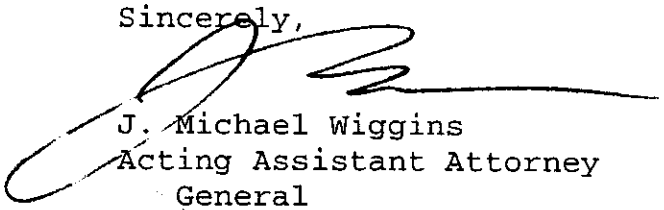
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change such as Northampton's redistricting plan has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also Procedures for the Administration of Section 5, 28 C.F.R 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. On behalf of the Attorney General, I must object to the 2003 redistricting plan for the Board of Supervisors of Northampton County.

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 submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

The Attorney General will make no determination regarding the submitted realignment of voting precincts because it is dependent upon the objected-to redistricting plan. Beyond the specific discussion above, however, in all other respects, we find that the County has satisfied the burden of proof required by Section 5.

If you have any questions, you should call Mr. Robert P. Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,



J. Michael Wiggins
Acting Assistant Attorney General
Civil Rights Division