



April 1, 2010

Chief, Voting Section  
Civil Rights Division  
U.S. Department of Justice  
1800 G Street, NW  
Room 7254 – NWB  
Washington, DC 20006

RE: Comment under Section 5 of the Voting Rights Act, Submission No.  
2010-0971, Fairfield County, South Carolina

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RICHARD ZACKS  
TREASURER

Dear Sir or Madam:

The Voting Rights Project of the ACLU (“ACLU”) submits this comment letter to urge the Department of Justice to interpose an objection under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, to South Carolina’s Submission No. 2010-0971, authorizing the Fairfield County Legislative Delegation to appoint two additional members to the Board of Trustees of the Fairfield County School District. The state has made another submission, No. 2010-0970, which transfers financial authority for the School District from the Board of Trustees to a new board appointed by the Fairfield County Legislative Delegation. This comment letter addresses only Submission No. 2010-0971.

The ACLU has represented African American voters in Fairfield County in prior litigation under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. The first suit was filed in 1988 and challenged at-large elections for the Town Council of Winnsboro, the Fairfield County seat. In July 1988, the federal district court ruled that the plaintiffs had established a prima facie case that the at-large system diluted minority voting strength in violation of Section 2, and ordered the implementation of a remedial districting plan. Broome v. Winnsboro, South Carolina Mayor and Town Council, Civ. No. 0-88-1160-16 (D. S.C.). The second case was also filed in 1988 and challenged at-large elections for the Fairfield County Council. Walker v. Fairfield County, South Carolina, County Council, Civ. No. 0-88-2927-6 (D. S.C.). The district court ruled that plaintiffs could establish a prima facie case of a violation of Section 2, and the parties agreed in December 1988, to submit a new plan for district elections.

Aside from polarized voting, the November 1988 election in Fairfield County was characterized by racial division. In the days leading up to the election, Robert Davis, a black councilman, told The State newspaper that whites had “threatened blacks to stay away from the polls.” He described the political atmosphere in the county as “a

plantation mentality, [which] has included threats against job security, exploitation of 'financial problems,' and outright asking blacks to stay away from the polls." Jeff Miller, "Fairfield elections protested," The State, November 4, 1988, p. 1-C.

The Board of Trustees of the Fairfield County School District is composed of seven members elected from single member districts, which were established in 1991. Act R 159 (1991). According to the 2000 census, Fairfield County is 59% African American. At the present time, six of the seven members of the board are African American. The bill passed by the state legislature, Act R 136 (HB 4432) of 2010, would allow the Fairfield County Legislative Delegation to appoint two additional members to the board. The two sponsors of the bill were Senator Creighton B. Coleman and Representative H. Boyd Brown, both of whom are from Fairfield County. Since the bill was local legislation, it passed by a single vote in both houses, *i.e.*, Senator Coleman's vote in the Senate and Representative Brown's vote in the House. The Governor, however, vetoed the bill on February 24, 2010, characterizing it as "local legislation." The veto was overridden by a vote of 1-0 in the House on March 2, 2010, and by a vote of 1-0 in the Senate on March 4, 2010.

It is something of an irony that South Carolina has a history of circumventing the power of county voters to elect their own local officials by transferring some or all of that power to members of the legislative delegation or other state level officials. Prior to the election of Benjamin R. Tillman as governor in 1890, local governing bodies in South Carolina were elected by popular vote. S.C. Const. of 1868, art. IV, § 19; 1873 S.C. Rev. Stat. 146, No. 155. In places like Edgefield County, where Tillman grew up, and where blacks comprised a substantial majority of the population and voter registration was supervised by federal officials, there were numerous black office holders during the Reconstruction years. O. V. Burton, Ungrateful Servants? Edgefield's Black Reconstruction: Part I of the Total History of Edgefield County, South Carolina 108 (Princeton Univ. Doctoral dissertation 1976). Given his admitted racism, it is not surprising that Tillman was instrumental in securing passage of legislation during his second term as governor that abolished elected local governments.

In 1894 the general assembly enacted a law requiring county and township commissioners to be appointed by the governor upon the recommendation of the local senator and representatives. 1894 S.C. Acts 481, 483, No. 320; 1899 S.C. Acts 1, 2, No. 1; 1899 S.C. Acts 113, 113-14, No. 86. All powers to tax, borrow money, appoint local boards, or exercise eminent domain were reserved for the state legislature. Since, as Tillman said, whites had "absolute control" of state

government, the legislation put it beyond possibility that blacks, even in places where they were the majority, would have any voice in choosing their local officials. For a discussion of this history see: Vander Linden v. Hodges, 193 F.3d 268, 270 (4th Cir. 1999) (“the legislative delegation system, which developed in place of locally elected county government, was similarly created out of fear of African-American voting power”); Laughlin McDonald, “An Aristocracy of Voters: The Disfranchisement of Blacks in South Carolina,” 37 S.C. L. Rev. 557, 569-70 (1986).<sup>1</sup>

Although Act R 136 (HB 4432) does not abolish the Board of Trustees of the Fairfield County School District, it would dilute the power of existing board members. More important, it would dilute the power of voters of Fairfield County by taking from them the power to select all members of the Board of Trustees and placing some of that power in the hands of the state Legislative Delegation. And given the demographics of the county and the Board of Trustees, that transfer of power would have an adverse racial impact and would be retrogressive within the meaning of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Beer v. United States, 425 U.S. 130, 141 (1976).

That the purpose of Act R 136 (HB 4432) is to diminish the power of existing board members is apparent from comments made by Senator Coleman. According to The State newspaper, “Senator Creighton Coleman said appointing the two new members was a necessity put in place to offset the boards reliable four member majority voting bloc, which he said has stymied progress in the district.” The State, February 22, 2010, p. 1.

Members of the Black Legislative Caucus, although they did not vote on the bill since it was local legislation, were strongly critical of it. The S.C. Senate Journal contains the following comments by Senator Robert Ford:

I strongly oppose H. 4431 and H. 4432 due to the impact on the Fairfield County School Board. I believe both pieces of legislation have the effect of subverting the will of Fairfield County voters, who elected the current school board members. As co-chairman of the Affirmative Action

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<sup>1</sup>In Vander Linden the court held that the legislative delegation system of local government violated one person, one vote given the fact that each member of a delegation had one vote but represented disproportionate numbers of county residents. 193 F.3d at 281. As a remedy, the state adopted a system of weighted voting for delegation members.

Committee of the S.C. Legislative Black Caucus, I have been asked to investigate whether the two Bills violate the 1965 Voting Rights Act. I believe the way to effect change on the school board is through the election process and not through local legislation which may disenfranchise voters. It is my intent to convey my concerns to the Civil Rights Division of the U. S. Department of Justice.

A statement by Senators John Matthews, Darrell Jackson , and Ralph Anderson was similarly critical of the bill.

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Out of a long-held precedent in the Senate where members do not vote on legislation affecting solely one county, also known as local legislation, we did not officially vote on Bills related to Fairfield County schools. However, we have serious concerns about the legislation.

The effect of H. 4431 and H. 4432 is to undermine the will of Fairfield County voters. As a result, we strongly oppose both pieces of legislation. The Bills serve to subvert the local election process and could be construed as devices to disenfranchise Fairfield County voters and thus violate the 1965 Voting Rights Act. We believe Fairfield County voters can best effect change for their community in the election process. We plan to relay our strong objections to the U.S. Department of Justice when the bills go to the agency for preclearance.

There has been other opposition to the bill. On March 11, 2010, the Town Council of Ridgeway, which is located in Fairfield County, voted not to support a resolution sponsored by the County Legislative Delegation supporting the change in the makeup and authority of the Fairfield County School District Board of Trustees. Several public meetings and a demonstration have also been held in Fairfield County in opposition to this legislation. Kamau Marcharia, a member of the Fairfield County Council and who participated in the demonstration, explained his opposition to the bill saying “it’s a question of democracy, which I think works better from the ground up rather than from the top down.” Herald Independent, March 31, 2010. Thomas Armstrong, the Chairman of the Fairfield Parents Association, was quoted in the local newspaper to similar effect saying that: “Senator Coleman and House Representative Brown have decided that when the citizens go to the polls and vote, that’s not good enough. They need to appoint someone to oversee us, but we elect them, we elect the county as well, but our vote for the school board is not good enough.” Herald Independent, February 2, 2010, p. 1.

One can be sympathetic to the concerns members of the Legislative Delegation have about problems the School District is experiencing in Fairfield County and support efforts to ensure the quality education of all students, but those efforts should not dilute the voting rights of minorities in Fairfield County. Under the circumstances, the ACLU urges an objection to Act R 136 (HB 4432).

Sincerely,

*Laughlin McDonald*

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Director, ACLU Voting Rights Project

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