Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Roberts, John G.: Files
Folder Title: JGR/(Department of Justice) DOJ Daily Reports (7)
Box: 16

To see more digitized collections visit:
https://reaganlibrary.gov/archives/digital-library

To see all Ronald Reagan Presidential Library inventories visit:
https://reaganlibrary.gov/document-collection

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: https://reaganlibrary.gov/citing

National Archives Catalogue: https://catalog.archives.gov/

64 Box 17 - JGR/(Department of Justice) DOJ Daily Reports (7) - Roberts, John G.: Files SERIES I: Subject File

THE WHITE HOUSE

WASHINGTON

December 5, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Justice Department Actions

1. The Department of Justice will file today an amicus curiae brief in the Norfolk school desegregation case pending before the United States Court of Appeals for the Fourth Circuit. In 1975 the Federal district court ruled that the Norfolk school system had become "unitary" -- i.e., had been desegregated. In 1982, the school board decided to make some changes in its desegregation plan, shifting to magnet schools. The mayor of Norfolk challenged the action, contending it must be reviewed and approved by the court. The school board argued that the role of the court ended with the 1975 finding that the school system was unitary. The board prevailed in district court. The brief to be filed today by the United States supports the ruling below and the position of the school board, contending that once a system has been desegregated -- has become unitary -- the remedial role of the court is at an end. This is not to say that the board may segregate anew, but that its actions, if challenged in a new suit, no longer carry the taint and need not be designed to correct past discrimination.

2. Maryland Attorney General Stephen Sachs was angered yesterday when the Department of Justice announced plans to file a Section 2 Voting Rights Act complaint against an at-large system in Dorchester County. Sachs had conducted a state audit of the system and found no discrimination; a suit to the contrary by the Justice Department would not reflect well on Sachs. The attached story in today's Post states that Sachs won a delay to examine the situation. The story is inaccurate: all Brad Reynolds granted Sachs was a day or two reprieve; there is no plan to delay the suit to allow time for corrective action by the state. Sachs himself is not authorized by state law to file suit, and Reynolds correctly declined to hold the Federal action in abeyance while Sachs sought a state constitutional amendment to permit a state suit. Sachs complains that the Federal suit contravenes principles of federalism, but I do not recall him leading the opposition to the 1982 amendments to the Voting Rights Act that compel the bringing of such suits.

The Washington Post, Wednesday, Dec. 5, 1984

Dorchester County Voting Rights Suit Postponed

Md. Conducting Its Own Inquiry, Sachs Tells Justice Department

By Angus Phillips
Washington Post Staff Writer

ANNAPOLIS, Dec. 4—Maryland Attorney General Stephen H. Sachs today successfully prevailed on the U.S. Justice Department to postpone filing a lawsuit charging Voting Rights Act violations in Dorchester County.

Sachs said the suit, to have been filed today, was postponed after he objected to it on grounds that the state already was working to uncover and correct any problems.

Sachs said he was "dumbstruck" when U.S. Atty. J. Frederick Motz notified him today of the impending suit. "Three of my lawyers were on their way to Dorchester at that moment" to audit the Western Shore county for possible voting rights violations, he said. "The state is dedicated to any self-correction necessary, and hard at work doing it."

Justice Department spokesman John Wilson confirmed that Sachs asked for and won a delay. Sachs made the request to William Bradford Reynolds, head of the Civil Rights division, who told Sachs "the department is willing to work with the state or anyone to correct the situation in Dorchester as quickly as possible," according to Wilson.

Whether Sachs can win a long-term reprieve from federal action is not clear. The Voting Rights Act is a federal law, updated by Congress in 1982, which the Justice Department is required to enforce.

The 1982 updating puts in jeopardy jurisdictions such as Dorchester that elect local officials at-large, rather than by districts. Civil rights groups maintain that such at-large elections can permit whites to control all seats on boards or commissions, even though blacks may comprise a significant portion of the voting population.

Congress strengthened the act by permitting federal courts to undo at-large election systems that have been proven to exclude minorities.

Sachs last summer ordered a staff audit of 13 of Maryland's counties that elect at-large and have black populations of 10 percent or more.

He said audits have been completed in Anne Arundel and Howard, where no violations were found, and Dorchester was next on the list.

"We're as committed to full enfranchisement of Maryland voters as anyone," Sachs said. "We're talking about a 1982 law. We're on top of it. We're not dragging our feet.

"In view of the fact that my people are there today, and the next election there is not until 1986, they [Justice] could at least stay their hand until completion of the [Dorchester] audit by the end of January," Sachs said.

Sachs said he assured county officials last summer that "it was better if we self-corrected than to have to scramble at the end of a third-party lawsuit."

The filing of a federal lawsuit, said Sachs, "is a kind of piling-on that is unjustified and sends the message that there is no reward for self-correction."

U.S. Department of Justice
Office of the Deputy Attorney General

12/6/84

TO: John Roberts

FROM: Roger Clegg

I will be sending over more stuff later.

Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, DECEMBER 5, 1984

CR
202-633-2019

The Department of Justice filed separate suits today challenging the at-large method of electing officials in Dorchester County, Maryland, and its county seat, Cambridge, as discriminatory against black voters.

Assistant Attorney General William Bradford Reynolds, head of the Department's Civil Rights Division, said the suits were filed in U.S. District Court in Baltimore, Maryland, against the county and city and their officials.

The suits charge violations of Section 2 of the Voting Rights Act.

Under at-large voting systems, voters throughout a city or county vote for each position to be filled in an election, rather than by ward or district.

No black has ever been nominated or elected to the board of county commissioners under the at-large system since the county has a voting-age population that is more than 73 percent white, the suit noted.

In Cambridge, which has a voting-age population that is more than 63 percent white, blacks were elected from a majority-black district until 1972, when the district, or ward, election system was replaced by at-large voting, the suit said. Since then, one black has been elected to the city commission because its members are required to reside in certain areas of the city.

(MORE)

The county suit said the at-large system violates the Voting Rights Act because it has been maintained for the purpose, at least in part, of denying blacks an equal opportunity to participate in the political process and to elect candidates of their choice to office.

The suit said voting in the county is racially polarized, the county has a long history of unlawful discrimination against blacks in voting, education, employment, housing, and public accommodations and facilities, and the county commissioners are unresponsive and insensitive to the needs of the black community.

If commissioners were elected from single-member districts, the suit said, blacks would have a voting majority in some of the districts and would have a fair opportunity to elect candidates of their choice.

The Cambridge suit said the city abandoned its single-member district election system because the districts were severely malapportioned and reapportionment would have resulted in blacks constituting a substantial majority in two of the five districts.

The suit said the change to at-large elections has led to a retrogression in black voting strength and was adopted, at least in part, for that purpose.

The city suit also detailed a long history of unlawful discrimination against blacks and charged that city commissioners are also unresponsive and insensitive to the needs of the black community.

(MORE)

Both suits asked the court to declare the at-large election system unlawful, prohibit its use in future elections, and require the county and city to devise election plans that meet the requirements of federal law.

# # # #

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, Plaintiff, v. DORCHESTER COUNTY, MARYLAND; BOARD OF COUNTY COMMISSIONERS OF DORCHESTER COUNTY, MARYLAND; WILLIAM WINGATE, CALVIN TRAVERS, LEONARD DAYTON, PHILIP D'ADAMO, JOHN LUTHY, Members of the Board of County Commissioners; BOARD OF SUPERVISORS OF ELECTIONS OF DORCHESTER COUNTY, MARYLAND; LEON LEWIS, RUDOLPH AARON, DONNA JAMES, Members of the Board of Supervisors of Elections, Defendants.	CIVIL ACTION NO.

COMPLAINT

The United States of America alleges:

1. This is an action brought by the Attorney General on behalf of the United States pursuant to Sections 2 and 12(d) of the Voting Rights Act of 1965, 42 U.S.C. 1973 and 1973j(d), and 28 U.S.C. 2201 to enforce rights guaranteed by the Fourteenth and Fifteenth Amendments.

2. This Court has jurisdiction of this action pursuant to 42 U.S.C. 1973j(f) and 28 U.S.C. 1345.

3. Defendant Dorchester County, Maryland is a political and geographic subdivision of the State of Maryland and exists under the laws of that State.

4. Defendant Board of County Commissioners of Dorchester County, Maryland is responsible under Maryland law for conducting the affairs of local government of Dorchester County. Defendants William Wingate, Calvin Travers, Leonard Dayton, Philip D'Adamo, and John Luthy are the elected members of the Board of Commissioners and are sued in their official capacities. All five commissioners are white, and are residents of Dorchester County.

5. Defendant Dorchester County Board of Supervisors of Elections is responsible under Maryland law for registering voters and for conducting and certifying the results of primary and general elections in Dorchester County. Defendants Leon Lewis, Rudolph Aaron, and Donna James are the members of the Dorchester County Board of Supervisors of Elections and are sued in their official capacities.

6. According to the 1980 Census, Dorchester County has a total population of 30,623, of whom 9,086 (29.7%) are black. The 1980 Census further shows that Dorchester County has a voting age population (18 years and older) of 22,763 of whom 6,070 (26.7%) are black.

7. The Board of County Commissioners of Dorchester County is elected pursuant to an at-large election plan, i.e., all voters within the county cast a ballot for each position to be filled on the five-member governing body. For the 1982 county commissioner elections, the county was divided into three districts for candidate residency purposes. One position was filled from candidates in the North County Commissioner District, one position was filled from candidates in the South County Commissioner District, and three positions were filled from candidates in the Central County Commissioner District. Beginning in 1986, a five residency-district plan will be implemented in county commissioner elections, but elections will continue to be conducted on an at-large basis. A candidate must reside within the residency district which he or she desires to represent. Elections are conducted on a partisan basis and a plurality of the votes cast is required for nomination and election. County Commissioners serve concurrent four-year terms.

8. No black person ever has been nominated in a primary election or elected in a general election to the Board of County Commissioners of Dorchester County.

9. Voting in Dorchester County is racially polarized. White voters generally do not vote for black candidates in election contests between black and white candidates. In contested Cambridge municipal elections in which only black candidates have sought to represent the Second Ward, white voters generally have not voted for the candidate favored

by a majority of the black community. As a consequence of the racially polarized voting, candidates favored by black voters carry predominantly black areas but nevertheless are defeated in county elections because of the at-large system.

10. Dorchester County has a long history of unlawful discrimination against black residents. Black residents of the county have been subjected to unlawful racial discrimination in voting, education, employment, housing, public accommodations and public facilities.

11. Black citizens of Dorchester County bear the effects of past racial discrimination as evidenced by present-day socioeconomic statistics in such areas as education, income, employment, housing and health; these continuing effects of racial discrimination hinder the ability of black citizens to participate effectively in the political process.

12. The members of the Board of County Commissioners of Dorchester County elected under the at-large system have been and continue to be unresponsive and insensitive to the particularized needs of the black community.

13. The black population of Dorchester County is sufficiently numerous and concentrated in particular areas of the county that, were members of the Board of County Commissioners elected from single-member districts, blacks

would be in a voting majority in some of the districts and would have a fair opportunity to participate in the political process and elect candidates of their choice to office.

14. The at-large method of nominating and electing the members of the Board of County Commissioners of Dorchester County implemented in the totality of the circumstances described in paragraphs 7-13, results in black citizens having less opportunity than other members of the electorate to participate in the political process and to nominate and elect candidates of their choice to office, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

15. The at-large method of nominating and electing members of the Board of County Commissioners of Dorchester County has been maintained for the purpose, at least in part, of denying black citizens an opportunity, equal to that afforded white citizens, to participate in the political process and to elect candidates of their choice to office. The maintenance of the at-large election system for such a racially discriminatory purpose constitutes a violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and the Fourteenth and Fifteenth Amendments.

16. Unless enjoined by order of this Court, elections for the Board of County Commissioners of Dorchester County will continue to be held in a manner violative of Section 2

of the Voting Rights Act, 42 U.S.C. 1973, and the Fourteenth and Fifteenth Amendments.

WHEREFORE, the United States of America prays that this Court enter an order:

(1) Declaring that the at-large system used for electing members of the Board of County Commissioners of Dorchester County violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and the Fourteenth and Fifteenth Amendments;

(2) Enjoining the defendants, their agents and successors in office, and all persons acting in concert with them from administering, implementing or conducting any future elections for the Board of County Commissioners of Dorchester County under the at-large system; and

(3) Ordering the defendants to devise an election plan which meet the requirements of federal law. If the defendants fail to devise such a plan, the Court should order a new election plan of its design into effect.

Plaintiff further prays that this Court order such relief as the interests of justice may require along with the cost and disbursements of this action.

WILLIAM FRENCH SMITH
Attorney General

By: _____
WM. BRADFORD REYNOLDS
Assistant Attorney General
Civil Rights Division

_____
J. FREDERICK MOTZ
United States Attorney

_____
GERALD W. JONES
Chief, Voting Section

_____
GERALD W. JONES
Chief, Voting Section
Civil Rights Division
Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530
202-724-5767

_____
JEREMY I. SCHWARTZ
Attorney, Voting Section
Civil Rights Division
Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530
202-724-3200

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, Plaintiff, v. CITY OF CAMBRIDGE, MARYLAND; COMMISSIONERS OF CAMBRIDGE, MARYLAND; GORTON McWILLIAMS, JR., EDWARD WATKINS, GUY WINDSOR, JAMES NEWCOMB, JR., PHILIP RICE, Commissioners; MAYOR OF CAMBRIDGE, MARYLAND; C. LLOYD ROBBINS, Mayor of Cambridge, Maryland; SUPERVISOR OF ELECTIONS OF CAMBRIDGE, MARYLAND; CLAUDE GOOTEE, Supervisor, Defendants.	CIVIL ACTION NO.

COMPLAINT

The United States of America alleges:

1. This is an action brought by the Attorney General on behalf of the United States pursuant to Sections 2 and 12(d) of the Voting Rights Act of 1965, 42 U.S.C. 1973 and 1973j(d), and 28 U.S.C. 2201 to enforce rights guaranteed by the Fourteenth and Fifteenth Amendments.

2. This Court has jurisdiction of this action pursuant to 42 U.S.C. 1973j(f) and 28 U.S.C. 1345.

3. Defendant City of Cambridge, Maryland is a municipal corporation organized and existing pursuant to the laws of the State of Maryland.

4. Defendant Commissioners of Cambridge, Maryland and defendant Mayor of Cambridge, Maryland are responsible under Maryland law for governing the City of Cambridge. The Mayor has the power to veto any ordinance passed by the Commission and to vote when a tie vote occurs. Defendants Gorton McWilliams, Jr., Edward Watkins, Guy Windsor, James Newcomb, Jr., and Philip Rice are the five elected members of the Commission and defendant C. Lloyd Robbins is the elected mayor; they are sued in their official capacities. Four of the Commissioners and the Mayor are white.

5. Defendant Supervisor of Elections of Cambridge, Maryland is responsible together with the Commission for registering voters and for the conduct of municipal elections in the City of Cambridge. Defendant Claude Gootee, who is white, is the current Supervisor of Elections and is sued in his official capacity.

6. According to the 1980 Census, the City of Cambridge has a total population of 11,703, of whom 4,794 (40.96%) are black. The 1980 Census further shows that Cambridge has a voting age population (18 years and older) of 8,796 of whom 3,205 (36.4%) are black.

7. Prior to the year 1972, the City of Cambridge elected its five-member governing body from five single-member districts or wards. Under this election plan a candidate

was required to reside in the ward he or she sought to represent and only the voters residing within the particular ward were permitted to cast a ballot to determine who would represent the ward. The ward known as the Second Ward was virtually all black in population and thus black voters of the ward were able to elect a candidate of their choice to the Commission.

8. The population of the City of Cambridge was apportioned among the five single-member districts in a manner which violated the one-person, one-vote principle of the Constitution of the United States. The district boundaries were drawn on a racial basis so as to include virtually all of the city's black population within the boundaries of the Second Ward. Under this apportionment scheme the Second Ward contained approximately 40 percent of the city's population. The malapportioned districting plan was operated for the purpose and with the effect of denying black citizens a vote of equal value to that granted white citizens.

9. Beginning in 1968, the Commissioners of Cambridge undertook to address the malapportionment of the five single-member districts. Reapportionment of the five single-member districts in a manner which would satisfy

constitutional requirements would result in black citizens constituting a substantial majority in two of the five districts. In order to avoid this result the Commission determined to abandon the single-member district election plan and adopt a plan whereby each Commissioner would be elected at-large, i.e., by all voters of the city. The Commission also determined to utilize the boundaries of the prior single-member districts as candidate residency districts.

10. Since 1972, the five Commissioners have been elected pursuant to the at-large system. Approximately 40 percent of the city's population continues to reside in the Second Ward and virtually all of the persons residing within the ward are black. Residency wards one, three, four and five, each contains from 10 to 19 percent of the city's population and virtually all of the residents of these four wards are white.

11. Elections for positions on the Commission are conducted on a nonpartisan basis and the Commissioners serve concurrent, four-year terms. The two candidates from each of the five residency districts receiving the most votes are nominated in the primary election, and must run-off in the general election to obtain election.

12. The change from the single-member district plan to the at-large election plan described in the preceding paragraphs has led to a retrogression in the position of black citizens with respect to their effective exercise of the electoral franchise and the at-large system was adopted, at least in part, for that purpose. Although the racially-based residency districts have resulted in one black person serving on the Commission, the person selected to represent the Second Ward has failed to receive a majority of the votes from voters of the Second Ward in contested elections. Elections within the city exhibit patterns of racial bloc voting and, in the context of the election plan utilized, white voters determine the outcome of the election in each of the five wards.

13. The City of Cambridge has a long history of unlawful discrimination against black residents. In addition to the racial discrimination affecting the right to vote described in the preceding paragraphs, black residents of the city have been subjected to unlawful racial discrimination in education, employment, housing, public accommodations, and public facilities.

14. Black citizens of the City of Cambridge continue to bear the effects of past racial discrimination as evidenced by present-day socioeconomic statistics in such areas as education, income, employment, housing and health; these continuing effects of racial discrimination hinder the ability of black citizens to participate effectively in the political process.

15. The Commissioners of Cambridge elected under the at-large system, have been and continue to be unresponsive and insensitive to the particularized needs of the black community.

16. There is no overriding state policy or governmental interest favoring the use of an at-large election method for electing the Commissioners of Cambridge.

17. The at-large method of nominating and electing the Commissioners of Cambridge implemented in the totality of the circumstances described in the preceding paragraphs results in black citizens having less opportunity than other members of the electorate to participate in the political process and to nominate and elect candidates of their choice to office, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

18. The at-large method of nominating and electing the Commissioners of Cambridge was adopted and has been maintained for an invidious racially discriminatory

purpose in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and the Fourteenth and Fifteenth Amendments.

19. Unless enjoined by order of this Court, elections for the Commissioners of Cambridge will continue to be held in a manner violative of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and the Fourteenth and Fifteenth Amendments.

WHEREFORE, the United States of America prays that this Court enter an order:

(1) Declaring that the at-large election system described in this complaint used for electing the Commissioners of Cambridge violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and the Fourteenth and Fifteenth Amendments;

(2) Enjoining the defendants, their agents and successors in office, and all persons acting in concert with them from administering, implementing or conducting any future elections for positions as the Commissioners of Cambridge under the at-large election system; and

(3) Ordering the defendants to devise an election plan which meets the requirements of federal law. If the defendants fail to devise such a plan, the Court should order a new election plan of its design into effect.

Plaintiff further prays that this Court order such relief as the interests of justice may require along with the cost and disbursements of this action.

WILLIAM FRENCH SMITH
Attorney General

By: _____
WM. BRADFORD REYNOLDS
Assistant Attorney General
Civil Rights Division

_____
J. FREDERICK MOTZ
United States Attorney

_____
GERALD W. JONES

_____
GERALD W. JONES
Chief, Voting Section
Civil Rights Division
Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530
202-724-5767

_____
JEREMY I. SCHWARTZ
Attorney, Voting Section
Civil Rights Division
Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530
202-724-3200

OFFICE OF
THE ATTORNEY GENERAL

December 28, 1984

Dick Hauser:

F. Y. I. This was filed today.

Judy Hammerschmidt

1/2/84

THE WHITE HOUSE
WASHINGTON

TO: John Roberts

FROM: *Richard A. Hauser* RAH
Deputy Counsel to the President

FYI: ✓

COMMENT: _____

ACTION: _____

cc. Barody ?

BACKGROUND
ON
CITY OF CLEBURNE, TEXAS v. CLEBURNE LIVING CENTER

Event: On December 28, 1984, the Department of Justice filed a friend of the court brief in the United States Supreme Court arguing that governmental classifications on the basis of mental retardation are not "quasi-suspect" and thus should not be given intensive or "heightened" judicial scrutiny under the Equal Protection Clause. Civil rights and handicapped groups may criticize us for this.

I. Facts:

This suit concerns the constitutionality of a zoning ordinance which requires that "special use permits" be obtained for mental retardates' group homes in Cleburne, Texas. Plaintiff, a non-profit organization which establishes and operates group homes for the mentally retarded, was denied such a permit by petitioner City. The Fifth Circuit Court of Appeals, reversing the district court, held that the zoning ordinance on its face and as applied, was unconstitutional under "intermediate scrutiny" equal protection analysis. This is the level of judicial review given to classifications on the basis of gender and illegitimacy but have never before been extended by any court to the mentally retarded. The fundamental issue presented by this case, then, is whether mentally retarded persons are a "quasi-suspect" class for equal protection purposes so that state action affecting them is to be judged under a heightened level of equal protection scrutiny.

II. Position of the United States: A classification can be deemed "quasi-suspect" only if it is premised on a characteristic that is almost always irrelevant to legitimate governmental objectives (e.g., race, sex). Retarded persons have special needs and disabilities that a responsible legislature would and should take into account. Thus, a legislative classification on this basis is not in any way "suspect" or otherwise deserving of special judicial scrutiny. Such classifications, rather, should be judged under the normal "rational basis" standard. We take no position on whether there is a rational basis for the city's zoning ordinance, but note that there may well not be any.

III . Anticipated Criticisms and Proposed Department of Justice Responses:

Criticism: The Reagan Administration is callously opposing the rights of the mentally retarded.

Response: The Reagan Administration fully supports laws and programs to protect and assist mentally retarded persons, including programs to foster development of the community-based group homes at issue in this case. What it does oppose is having the federal judiciary, rather than democratically elected legislators, making the sensitive policy judgments on how to best help retarded persons. The Equal Protection Clause was not designed to prohibit rational legislative accommodations of the special needs and abilities of different groups, but only to prohibit invidious discrimination on the basis of irrelevant characteristics. Thus, if a group, such as the mentally retarded, have special needs, differential treatment by the legislature is to be expected and should not be "second-guessed" by courts.

Criticism: The Reagan Administration supports a City that has excluded mentally retarded persons.

Response: The Justice Department brief does not support the City's action but addresses only the purely legal question of whether every legislative classification affecting the mentally retarded should be viewed as presumptively invalid. Indeed, the Administration strongly supports group homes for the mentally retarded as a policy matter, and strongly suggests in its brief that there may be no rational basis for the City's opposition to such homes.

IV. Talking Points:

- The brief opposes the judiciary's interference with legitimate legislative policy choices, not the rights of mentally retarded persons.
- The brief does not support the City's action but addresses only the broad legal issue of whether all the governmental classifications on the basis of mental retardation should be given heightened judicial scrutiny.

U.S. Department of Justice
Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

daily report file

January 17, 1985

MEMORANDUM FOR: Honorable Richard A. Hauser
Deputy Counsel to the President
The White House

FROM: Roger Clegg RC
Associate Deputy Attorney General

ground materials on Here are some background materials on our filing in
l v. Scanlon Atascadero State Hospital v. Scanlon. I talked with
case this mor John Roberts about this case this morning.

Attachment

Background on ATASCADERO STATE HOSPITAL v. SCANLON

Event: On Janury 18, 1984, the United States filed a brief in the Supreme Court supporting the State of California, defendant in a federal discrimination case brought by a handicapped individual. The United States argued that the suit was barred by the Eleventh Amendment. Civil rights groups and advocates of the rights of the handicapped may criticize us for this.

I. Facts: Plaintiff, who suffers from diabetes mellitus and loss of vision in one eye, claims he was denied employment at a California State Hospital solely because of those disabilities. He sued the Hospital in federal court, alleging that he was the victim of employment discrimination prohibited by the federal Rehabilitation Act. One of several issues raised in the case was whether the State Hospital could be sued in the federal court despite the Eleventh Amendment's express prohibition of private suits against States in federal courts. In 1980, when the issue was first presented to the court of appeals, the United States took the position that the Eleventh Amendment did not bar plaintiff's suit in the federal courts. Procedural aspects of the case prevented the issue from being presented to the Supreme Court until 1984. There, the United States has taken the opposite position, urging that the Eleventh Amendment does bar federal suits for damages against the States and state entities for violation of the Rehabilitation Act.

II. Position of the U.S.: The Eleventh Amendment's grant to the States of immunity from suit in the federal courts is a basic and time - honored constitutional underpinning of the relationship between the federal government and the States. It may be abrogated or waived only when Congress enacts legislation which expressly does so. The Rehabilitation Act does not even deal with the question of the States' immunity. Therefore the States' Eleventh Amendment rights remain in force.

III. Relationship to Administration Philosophy: The Administration has stressed that the constitutional autonomy of the States is an important element of our federal structure. In addition, it has been the Administration's position that federal judicial power should not be extended inappropriately over the functioning of State and local governments and the lives of their citizens. The position taken by the United States would uphold the autonomy of the States and limit the exercise of federal judicial authority to areas specified by the Constitution and by Congress.

IV. Anticipated Criticism and Planned Department of Justice Response:

Criticism: The Reagan Administration is attempting to prevent victims of discrimination from asserting their rights under federal law.

Response: The Administration remains fully committed to equal opportunity for the handicapped. The position taken here deals not with the substantive rights of any individual, but with the constitutional allocation of power between the executive and legislative branches, the judiciary, and the States. However this issue is decided, handicapped individuals will retain their right to be free from employment discrimination, and the United States will retain its authority to enforce those rights in any appropriate forum, including the federal courts. Only private suits against the States, the precise subject matter of the Eleventh Amendment, would be barred, and they would be barred only from federal court.

Criticism: The Reagan Administration has shifted its position in this case for political reasons.

Response: The position taken in this case in 1980 is incorrect and should never have been taken. Moreover, the fact that this prior position is erroneous has been confirmed by subsequent decisions of two different United States Court of Appeals. In addition, the United States' current position is mandated by the consistent decisions of the Supreme Court including several cases decided since 1980.

V. Talking Points

* The United States fully supports efforts to end employment discrimination against the handicapped.

* The United States will retain complete authority to enforce the antidiscrimination provisions of the Rehabilitation Act, and will vigorously enforce them, regardless of the outcome of this case.

* It is unnecessary and improper, however, to undermine the constitutional position of the States in our federal system by inventing a private remedy never authorized or contemplated by Congress.

U.S. Department of Justice
Office of the Deputy Attorney General

January 29, 1985

TO: John Roberts

FROM: Roger Clegg

Per our conversation.

U.S. Department of Justice

Land and Natural Resources Division

Office of the Assistant Attorney General

Washington, D.C. 20530

January 25, 1985

MEMORANDUM

TO: William French Smith
Attorney General

Carol E. Dinkins
Deputy Attorney General

FROM: F. Henry Habicht II
Assistant Attorney General
Land and Natural Resources Division

RECEIVED
OFFICE OF THE
ATTORNEY GENERAL
JAN 29 11 55 AM '85
EXEC.
DEPUTY ATTORNEY
GENERAL

SUBJECT: Information regarding filing of United States v. Metropolitan District Commission, et al. (D. Mass.)

This is to advise you of a major civil action under the Clean Water Act that is scheduled to be filed on January 31, 1985. The action concerns discharges of sewage into the Boston Harbor, and may be of significant media interest.

The Metropolitan District Commission ("MDC") is an agency of the Commonwealth of Massachusetts which collects and treats wastewater from 43 communities in the Boston, Massachusetts metropolitan area. The MDC owns and operates two primary wastewater treatment facilities, the Deer Island plant and the Nut Island plant, three combined sewer (combined sewage and storm water) overflow treatment facilities, and 228 miles of interceptor sewers (an interceptor sewer is essentially a large collector sewer). Some 5,350 miles of local sewers are tied into MDC facilities. Local communities also own a number of combined sewer overflows and storm water discharge points.

The Deer Island plant, located on the north side of Boston Harbor, discharges an average of about 316 million gallons per day ("MGD") of wastewater and about 45 tons of sludge solids to Boston Harbor each day. The Nut Island plant, located on the south side of Boston Harbor, discharges an average of about 153 MGD of wastewater and about 30 tons of digested sludge solids into Boston Harbor each day.

The complaint principally names MDC and the Commonwealth of Massachusetts and alleges that the wastewaters discharged from the foregoing two plants regularly violate the effluent limitations of MDC's National Pollution Discharge Elimination System ("NPDES") permit issued under the Clean Water Act. Moreover, on numerous occasions, plant breakdowns have led to unlawful bypasses of raw or partially treated sewage. The discharges of sludges into the Harbor from the wastewater treatment outfalls were to have terminated years ago, according to the NPDES permit. During rainstorms and even in dry weather, sewage, mixed in with rainwater, passes untreated through at least 108 combined sewer overflows into the Harbor and its tributaries. These discharges are also in violation of NPDES permit requirements. In the summer these discharges cause beach closings.

As a result of a sewer connection ban issued by the state superior court in a case filed by the City of Quincy, MA, against the MDC (later reversed on appeal), the Massachusetts legislature recently enacted a statute creating the Massachusetts Water Resources Authority ("Authority") to take over the operations of MDC of the Boston metropolitan area water and sewerage systems. That Authority came into existence on January 1, 1985, and will take over responsibility for the sewerage system on July 1, 1985. We have therefore named in the complaint the Authority for prospective relief and have also named the Boston Water and Sewer Commission, a local governmental entity which owns and operates 65 combined sewer overflow discharge points in the City of Boston which are interrelated with the MDC sewerage system.

This lawsuit should be well-received. EPA in Boston is most anxious to file and the sewage problem in Boston Harbor is clearly a massive and longstanding problem. Bill Weld wants to take the lead on the case. We will work closely with him, given the national significance of the issues, particularly the issue of appropriate judicial remedies.

Please let me know if we can provide any further information. We will coordinate closely with Public Affairs.

U.S. Department of Justice

Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

RECEIVED
JAN 28 11 44 AM '85
DEPUTY ATTORNEY GENERAL

January 25, 1985

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

Re: Defendants/Plaintiffs' Stipulation for Continuance in Ruiz v. Procunier

Plaintiffs and defendants in the above-referenced case have entered into a stipulation, filed January 24, 1985, continuing the hearing on crowding set for February 4, 1985. After reviewing the proposed stipulation, we decided that there was a reasonable basis for the continuance, and by letter of January 24, 1985, we informed the Court that the United States, plaintiff-intervenor in this case, did not oppose the stipulated continuance.

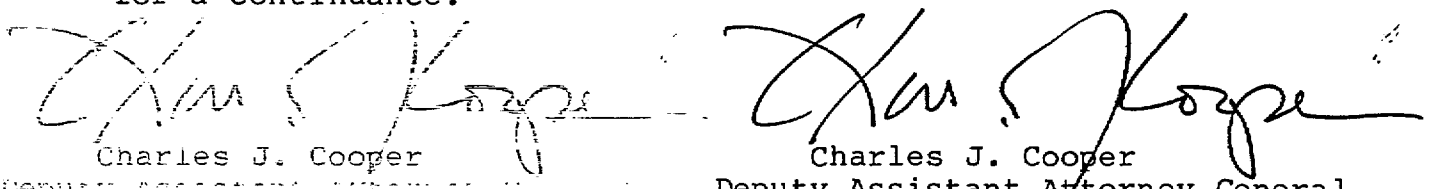
Plaintiffs and defendants negotiated the stipulation (copy attached) without our participation, and submitted a draft copy to us on January 22, 1985. The stipulation would stay the February 4, 1985 crowding hearing pending a number of changes at TDC, described below. Under the agreement neither defendants nor plaintiffs can move to reset the hearing until March 1, 1985, and if defendants fulfill their obligations under the stipulation, the continuance can be extended to August 1, 1985.

The stipulation generally addresses areas beyond the scope of the United States' interest in this case, but does not prejudice our right to raise our security or classification concerns. The stipulation: (1) requires TDC to award additional good time to certain prisoners, making them eligible for earlier release from TDC; (2) freezes the number of single cells presently in use at TDC for treatment purposes or administrative segregation, and requires TDC to designate an additional 500 cells for these purposes over a period of nine months; further, if as of March 1, 1985, the parties continue to agree to the continuance, TDC will designate an additional 200 single cells for treatment and safety purposes, according to a timetable yet to be established; (3) requires TDC to build 44 cells for housing medium and close custody female inmates, consistent with TDC's classification plan; (4) requires TDC to immediately authorize construction of

psychiatric care and health care beds at the Ellis II unit (consistent with obligations under plans already filed); (5) sets forth a timetable for renovation of medical facilities at nine units; (6) requires defendants to submit to plaintiffs their proposal to the legislature showing TDC capacity and staffing needs assessments for each unit; and (7) requires defendants to report on their compliance with the provisions of this stipulation. The stipulation further allows all parties to conduct additional discovery.

Of the stipulation's provisions, only that for single celling appears to touch our concerns, in that it may provide TDC greater ability to single-cell assaultive or vulnerable inmates who cannot safely be housed with other inmates. The proposed stipulation does not in any way prejudice our right to object or to raise our security concerns and may in fact result in the resolution of some of our concerns. Further, the time frame does not differ substantially from the April 16, 1985 continuance we earlier suggested to the Court.

Accordingly, we informed the Court by letter of January 24, 1985, that the United States does not oppose the proposed stipulation for a continuance.



Charles J. Cooper
Deputy Assistant Attorney General
Civil Rights Division

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID RUIZ, et al.,	)	Civil Action No. H-78-987
Plaintiffs,	)	
UNITED STATES OF AMERICA,	)	STIPULATION CONTINUING HEARING ON PLAINTIFFS' MOTION TO MODIFY AMENDED DECREE
Plaintiff-Intervenor,	)	
vs.	)	
RAYMOND K. PROCUNIER, et al.,	)	
Defendants.	)	

COPY

It is stipulated between plaintiffs and defendants as follows:

1. With regard to the additional good time for participation in educational, vocational, and on-the-job training programs authorized by SB 640, defendants shall, as quickly as possible, make awards of 60 days of good time credit to all prisoners who currently are receiving additional good time pursuant to SB 640. Defendants also shall make awards of 60 days of good time credit to all prisoners who in the future become eligible for additional good time as a result of completion of an educational, vocational or on-the-job training certification program. The sixty day awards referred to in this paragraph shall not be subject to forfeiture as a result of conviction of a disciplinary offense. No prisoner may receive more than one sixty day award pursuant to this paragraph during a single period of incarceration, regardless of additional program participation.

2. The parties agree that as of December 3, 1984, 362 general population prisoners were housed in safekeeping status in single occupancy cells; 222 prisoners involved in mental health or mental retardation treatment were housed in single occupancy cells; 61 male prisoners were housed in single occupancy cells in the Ellis II Unit Treatment Center; 14 female prisoners were housed in single occupancy cells at the Mountain View Unit Treatment Center; and 740 prisoners assigned to administrative segregation status were housed in single occupancy cells. Defendants shall not hereafter reduce the number of prisoners in the combined aforementioned classes who are housed in single occupancy cells from the total number of single occupancy cells (1,399) designated for those combined classes of prisoners on December 3, 1984. In addition, defendants shall designate an additional 500 single occupancy cells, over and above 1,399, to be allocated to mentally ill prisoners, mentally retarded prisoners, prisoners in safekeeping status, and prisoners in administrative segregation status. The designation of the additional 500 single occupancy cells shall be accomplished over a period of nine months, with no less than 50 single occupancy cells designated each month. In addition, if, on or about March 1, 1985, the parties agreed to a further continuance of a hearing on plaintiffs' motion to modify the Amended Decree, defendants shall designate an additional 200 single occupancy cells, over and above 1,899, to be allocated to mentally ill prisoners, mentally retarded prisoners, prisoners in safekeeping status, and prisoners in administrative segregation status. The designation

of these cells shall be made as quickly as possible according to a timetable to be established at a meeting between plaintiffs and defendants. In no event, however, shall the designation occur later than March 1, 1986.

3. To implement in part the provision at pages 79 and 80 of defendants' Classification Plan (December 12, 1984), requiring cells to house medium and close custody female prisoners, defendants shall complete the construction of 44 cells at the Mountain View Unit, using free-world labor, by March 1, 1986. The provisions of this paragraph do not alter defendants' obligation to provide an adequate number of cells for female prisoners under the Mentally Retarded Offender Plan, the Classification Plan, and the Stipulation and Order Modifying the Court's Order of January 11, 1984, filed on May 2, 1984.

4. Before February 1, 1985, defendants shall authorize architectural drawings for construction of a facility at the Ellis II Unit, using free-world labor, that will, when completed, include at least 300 beds for acute psychiatric patients, 100 skilled nursing beds for medical/surgical patients, and 50 intermediate care beds for geriatric, handicapped and chronically ill patients. Immediately thereafter, defendants shall solicit bids from free-world construction companies to begin construction of the facility. Actual construction will begin as quickly as possible.

5. Defendants shall use free-world labor to construct medical facility renovations on the following units according to the following timetable:

Unit	Commencement of Construction	Completion of Construction
Clemens	March 1985	August 1985
Coffield	April 1985	November 1985
Ramsey I	April 1985	October 1985
Retrieve	March 1985	September 1985
Ramsey II	January 1985	June 1985

Defendants may use prisoner labor to complete medical facility renovations on the following units in accordance with the following timetable:

Unit	Commencement of Construction	Completion of Construction
Ellis I	July 1984	April 1985
Eastham	January 1985	October 1985
Ferguson	February 1985	November 1985
Wynne	January 1985	October 1985

The completion of those projects entailing the use of prisoner labor shall be given top construction priority by defendants. In addition, pending the completion of medical facility renovations at the Wynne Unit, and within three months from the date of the execution of this Stipulation, defendants shall transfer a substantial number of the estimated 100 to 120 chronic and geriatric patients from that unit to appropriate facilities at other units. Defendants may consider in determining which prisoners will be transferred, among other things, the following: (1) the prisoner's medical condition, (2) the prisoner's preference to be transferred, and (3) the prisoner's programmatic activity at the Wynne Unit.

6. On or before February 22, 1985, defendants shall submit to plaintiffs the proposal and analysis that they are submitting at that time to the 69th Legislature, which shall be deemed to be what defendants consider a realistic assessment of the capacity of each TDC unit and the staffing needs of each unit.

7. The parties agree that the evidentiary hearing presently set for February 4, 1985 shall be continued. Until March 1, 1985, neither party to this Stipulation will request that a new hearing date be set. Plaintiffs shall review defendants' proposal to the legislature referred to in paragraph 6, supra, to determine whether that proposal appears to offer a possible basis for the settlement of the outstanding issues raised in plaintiffs' pending motion to modify the Amended Decree. Although plaintiffs shall be free to request the setting of a new hearing date if they believe defendants' proposal, even if funded, is insufficient to provide a basis for settlement of those outstanding issues, plaintiffs shall not seek any concessions unrelated to defendants' proposal, in the form of immediate relief or otherwise, as a condition to agreeing to further continuance (up to August 1, 1985) of the evidentiary hearing on plaintiffs' motion. If either party requests a hearing to be set after March 1, 1985, the parties understand that such hearing will be set on a date to be selected by the Court.

8. Defendants shall file reports on or before the first day of each of the six months following this Stipulation, describing their compliance with each of the provisions listed above.

9. The parties may continue to conduct discovery regarding the issues; any discovery cutoff will be established by further order of the Court. The Court's order of October 31, 1984, including its pretrial schedule and the pretrial order, will be modified to the extent necessary to conform to this Stipulation; provided, however, that each party shall serve and file, by March 1, 1985, any and all objections to exhibits that have been provided to it. The parties may supplement their witness lists, proposed findings, and exhibits until 30 days prior to any hearing set in this cause.

[illegible]
Counsel for Plaintiffs

William Bennett Turner
Counsel for Plaintiffs

[illegible]

Richard E. Gray, III
Counsel for Defendants