

Honorable William J. Guste, Jr.
Attorney General
Department of Justice
Post Office Box 44005
Baton Rouge, Louisiana 70804

7 FEB 1980

Dear Mr. Attorney General:

This is in reference to Act No. 522 of the 1979 Louisiana Regular Legislative Session, providing for the creation of an additional at-large elective judgeship, Division "D", for the City Court of Baton Rouge, and for a special election to fill that judgeship, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on August 3, 1979; additional information was received on October 23, 1979; and the submission became ripe for review and complete on December 11, 1979, when we received a submission by the City of Baton Rouge of the previously unsubmitted prior creation of Division "C" of the Baton Rouge City Court.

Under Section 5, the State of Louisiana has the burden of proving that the proposed creation of the additional Division "D" judgeship does not represent a retrogression in the position of the black residents of Baton Rouge and that it does not transgress constitutional limits with respect to black voters. See Beer v. United States, 425 U.S. 130 (1976). See also 28 C.F.R. 51.19. Under White v. Regester, 412 U.S. 755 (1973), and its progeny, Zimmer v. McKeithen, 485 F. 2d 1297 (5th Cir. 1973), affirmed sub. nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976), to prove the constitutionality of its creation of the Division "D" judgeship under the present Baton Rouge City Court election plan, the State must prove that the electoral system is equally open to black and white voters, and that each group has a fair opportunity to elect candidates of its choice.

We have given careful consideration to the information you have provided as well as to comments and information provided by other interested parties. In addition to other evidence of a general pattern of racially polarized voting in the City of Baton Rouge, we have noted that no black person has ever won election to the Baton Rouge City Court. We have been presented with and have considered information evidencing a political climate that discourages black participation in city court elections, and the presence of majority-vote and designated post (division) requirements that exacerbate the effects of the at-large judicial election system. Finally, we have noted our interposition of an objection to the Baton Rouge City Council's 1973 creation of an at-large elective judgeship for Baton Rouge City Court Division "C". For your information, we have attached a copy of our letter of objection.

On the basis of our review, it does not appear that the creation of the Division "D" judgeship would offer black voters a fair opportunity to elect the candidate of their choice. At the same time, the city and state have rejected alternative electoral systems that would offer such an opportunity. For example, our analysis shows that the adoption of a single-member district plan or the elimination of the majority vote and designated post requirements could produce an electoral system which would not exclude blacks from fair access. The creation by the State of Louisiana of a judgeship under a system that would maintain black voting strength at a minimum level, where alternative options would provide a fair chance for black participation is relevant to the question of an impermissible racial purpose in its adoption. See Wilkes County v. United States, 450 F. Supp. 1171 (D. D.C. 1978).

Under the circumstances we are unable to conclude, as we must under Section 5, that the submitted change does not have a racially discriminatory purpose or effect. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the creation of the Division "D" judgeship.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this 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. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make Act 522 legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action the State of Louisiana plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Mr. Andrew W. Karron (202--724-7403) of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division