U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

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Harry A. Rosenberg, Esq.
Phelps, Dunbar, Marks, Claverie
& Sims
Texaco Center
400 Poydras Street
New Orleans, Louisiana 70130-3245

Dear Mr. Rosenberg:

This refers to the change in the method of electing the parish council from four single-member districts, two superdistricts, and one at-large seat, to election from six single-member districts and one at-large seat, and a new districting plan for Jefferson Parish, Louisiana, 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 submission on September 18, 1989.

We have considered carefully the information you have provided, comments and information received from other interested parties, and the opinions and rulings of the district court in East Jefferson Coalition for Leadership and Development v. Parish of Jefferson, 691 F. Supp. 991 (E.D. La. 1988) (liability), and Proposed Order (Jan. 19, 1989) and Order and Reasons (Mar. 5, 1989) (remedy).

At the outset, we note that the need for the parish to adopt a new method of election and districting plan results from the district court's ruling that the current election system denies black citizens an equal opportunity to participate in the political process and elect candidates of their choice to office, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973. In that regard, the court found a pattern of racially polarized voting in parish elections, a determination which is confirmed by our analysis of parish election returns.

The parish proposes a plan in which the district with the greatest black population is 46 percent black (according to 1980 Census figures), which represents a marked increase from the most heavily black district in the current plan. Thus, the submitted changes do not occasion any retrogression in black voting strength. Beer v. United States, 425 U.S. 130 (1976). However, the information we have received regarding the submitted changes indicates that they may well have been motivated by an invidious purpose to minimize black voting strength in the proposed districting plan.

In that regard, the parish contends that the district which is 46 percent black in population significantly benefits black voters by allowing them to influence the election of a parish councilmember. However, it appears that in arriving at the submitted plan, the parish rejected a number of alternative plans each of which contained a district with a black population and voter registration majority, and thus would have provided black voters not only significantly greater influence but, indeed, a realistic opportunity to elect a candidate of their choice to the council. While a jurisdiction is not required to design a plan to assure minority representation, it must be able to explain in non-racial terms the reasons underlying its choice of plans.

In this instance, the parish has proffered the explanation that the selected plan adhered to certain neutral redistricting criteria, namely, compactness and the honoring of natural and person-made boundaries in the parish. However, our review of the proposed districting map, as well as the districting maps for the current plan and alternative plans that were offered, suggests that the parish freely strayed from its stated criteria in fashioning many districts. Strict adherence to such criteria to prevent the creation of a district with a black population majority is an inconsistent application of districting criteria strongly suggestive of racial purpose. Busbee v. Smith, 549 F. Supp. 494, 517 (D.D.C. 1982), sum. aff'd, 459 U.S. 1166 (1983).

Moreover, there is little difference between the basic configuration of the district that would be 46 percent black in the parish's submitted plan, and the configuration of the black majority district in the alternative six district and seven district plans that were offered to the parish to remedy the Section 2 violation. The essential difference appears to be that the parish chose to include in the district the white River Ridge area rather than the black community of Lincoln Manor, though representatives of both areas strongly opposed this decision. We recognize that this

configuration likely was chosen to avoid the oddly-shaped configuration in the Lincoln Manor area which was included in the black-majority district offered at trial. However, in subsequent alternatives this problematic configuration was eliminated. Under these circumstances, we have been unable to ascertain any non-racial reason for including River Ridge in this particular district of the submitted plan.

Finally, we note that although the district court did not require the parish to propose a remedial plan which includes a district with a black population majority, it did not preclude the parish from drawing such a plan. The court had concluded, based upon consideration of the one plan proposed by plaintiffs at trial, that a black majority district could be drawn only by distorting district boundaries and creating a gerrymander. Based upon review of later plans offered to the parish and the district court but not considered by the district court at trial, we have reached a different conclusion. There are in fact other fairly drawn plans which include a black majority district, without the features found objectionable by the district court.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the parish's burden has been sustained in this instance. Therefore, while we do not object to the proposed change to a 6-1 method of election, on behalf of the Attorney General, I must interpose an objection to the districting plan adopted for implementing that change.

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 the districting plan will have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race of color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the districting plan continues to be legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Jefferson Parish plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner, an attorney in the Voting Section, at (202) 724-8388.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: David Gelfand, Esq.
Appellate Advocacy Program