



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 5, 1994

Sheri Marcus Morris, Esq.
Assistant Attorney General
P.O. Box 94125
Baton Rouge, Louisiana 70804-9125

Dear Ms. Morris:

This refers to Act No. 145 (1994), insofar as it provides for the establishment of an additional judgeship (Division C) for the Eleventh Judicial District; and the procedures for conducting a 1994 special election for the new judgeship, 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 responses to our September 13, 1994, request for additional information on September 15 and 19, 1994; other supplemental information was received on September 26 and 30, 1994.

We have given careful consideration to the information you have provided, as well as to 1990 Census data, comments received from other interested persons, information contained in the state's prior submissions of voting changes affecting the election of state judges, and prior litigation concerning judgeship elections in the state. 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 Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, the Section 5 Procedures (28 C.F.R. 51.55(b)(2)) require that preclearance be withheld where a change presents a clear violation of the results standard incorporated in Section 2 of the Voting Rights Act, 42 U.S.C. 1973. Where the submitted changes involve additional elective positions, those changes must be reviewed in light of the method by which the positions will be elected.

Blacks constitute 31.4 percent of the total population of DeSoto and Sabine Parishes, the two parishes that constitute the Eleventh Judicial District. The Eleventh District has been served by two judges, who are elected at large by designated position with a majority vote requirement. The state now proposes to add a third judgeship to the district, while retaining the at-large electoral system.

Our analysis indicates that the at-large system does not allow black voters an equal opportunity to participate in judicial elections and elect candidates of their choice. In this regard, it appears that elections in the Eleventh District are characterized by racially polarized voting, whose impact is exacerbated in judicial elections by the use of a majority vote requirement and designated positions. Other electoral circumstances also are present that impede the opportunity of black voters to participate equally in at-large elections, including a history of discrimination in voting and other areas of public life, and socioeconomic disparities between the white and black residents of the district.

District court judges in Louisiana (as well as other state court judges) now are frequently elected from single-member or multi-member electoral subdistricts. Were three subdistricts drawn in the Eleventh Judicial District in a plan that respects traditional districting principles, one district would include a black voting age population majority and would provide black voters with a substantial opportunity to elect a candidate of their choice.

It appears that during the process leading to the adoption of Act No. 145 some consideration was given to whether the establishment of the third judgeship should be accompanied by the creation of electoral subdistricts. However, despite the recent changes in the state to implement subdistricts in judicial elections, and the fact that establishing an additional judgeship would make it more feasible to draw a subdistrict with a black voting age population majority, little effort was made to study the demographics of the Eleventh District with regard to creating a subdistrict plan.

In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that the state has made the necessary showing under Section 5. Therefore, while we do not in any way question the state's need for establishing the additional district court judgeship, I must, on behalf of the Attorney General, interpose an objection to the additional judgeship for the Eleventh Judicial District Court in the context of the existing at-large election system.

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 has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may 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 creation of the third judgeship in the Eleventh Judicial District Court continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

Because the proposed special election is directly related to the objected-to change, the Attorney General will make no determination with respect to this matter. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Louisiana intends to take concerning this matter. If you have any questions, you should call Special Section 5 Counsel Mark A. Posner, at (202) 307-1388.

Sincerely,



Kerry Alan Scanlon
Acting Assistant Attorney General
Civil Rights Division