



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

AUG 17 1998

T.H. Freeland IV, Esq.
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P.O. Box 269
Oxford, Mississippi 38655

Dear Mr. Freeland:

This refers to the annexation adopted on October 25, 1993, and affirmed by the Mississippi Supreme Court on March 11, 1996; the cancellation of the April 8, 1996 general municipal election; and the December 1997 redistricting plan for the City of Grenada in Grenada County, Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. On April 20, 1998, we received your submission of the 1997 redistricting plan and your response to our December 17, 1996 request for additional information regarding the annexation and the cancellation of the 1996 election. Additional information that we received on May 13, 20, and 30, and on June 8, 10, 12, 16, and 17, 1998, were essential to a thorough evaluation and analysis of the submitted changes; accordingly, this information recommenced the sixty-day review period under Section 5 for the above-described changes. Additional information regarding these changes was also received on June 29, July 17, and August 14, 1998.

Section 5 of the Voting Rights Act requires that the submitting authority demonstrate that the proposed changes have neither a discriminatory purpose nor a discriminatory effect. See City of Pleasant Grove v. United States, 479 U.S. 462, 469 (1987). Under Section 5, a voting change has an impermissible discriminatory effect if it would "lead to a retrogression in the position of [minority voters] with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). In situations like the one in Grenada, where the City has adopted an annexation and a new redistricting plan, the Supreme Court has held that impermissible retrogression

occurs when the new redistricting plan does not "fairly reflect" the voting strength of the black community in the enlarged City. City of Richmond v. United States, 422 U.S. 358, 371 (1975). With regard to the requirement that the City prove the absence of discriminatory purpose, the Supreme Court has found that the factors and analysis set forth in Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977), are applicable to a purpose analysis under Section 5. See Reno v. Bossier Parish School Board, 117 S. Ct. 1491 (1997).

We have devoted considerable time and resources to analyzing and evaluating the submitted voting changes under these standards. We have considered carefully the information you provided, as well as data from the Bureau of the Census, and information and comments from other interested persons. Our efforts have been complicated considerably by the fact that your April 20, 1998 submission was incomplete and, in several respects, inaccurate. Voting Section staff members made repeated telephone inquiries of you, the city clerk, the consultants retained by the City, city council members, and other residents of the City and annexed area in order to obtain essential information regarding the impact of the annexation and redistricting plan, as well as clarification, explanation, and documentation of the process that led to the proposed changes. Based on our evaluation of the data we were able to gather, I cannot conclude that the City of Grenada has met its burden under Section 5. The reasons for this conclusion are set out below.

According to the 1990 Census, the City of Grenada had a total population of 10,854 of whom 5,341 (49.2 percent) were black. The population of the City had declined since 1980, with the white population decreasing significantly faster than the black population. This demographic trend continued during the 1990's, and by May 1997, when the Census Bureau conducted a special census commissioned by the City, Grenada's total population had declined to 9,492 of whom 5,100 (53.7 percent) were black.

The impact of the proposed changes is, of course, the critical factor in evaluating their effect under Section 5; however, it is also an important starting point in assessing the purpose behind the changes. See Arlington Heights, 429 U.S. at 266. In the City of Grenada, the adverse impact of the proposed annexation, redistricting plan and cancellation of the 1996 election on minority voters is substantial. The annexation almost quintuples the geographic area of the City, and according to a special census of the City conducted in 1997, changes the City from majority black (5,100 black of 9,492 total population

or 53.7 percent black) to majority white (6,899 black of 14,262 total population or 48.4 percent black), while leaving black voters outside the City.

The proposed redistricting plan also reduces the electoral opportunities for black voters. In 1991, when Grenada's black population constituted 49 percent of the City's total population (according to the 1990 Census), black persons were a substantial majority in three wards and 45 percent of a fourth ward. By 1997, the black population had become a majority of the City (according to the 1997 Special Census), and, similarly, black persons constituted a majority in four wards. The proposed redistricting plan would reduce the number of wards in which black persons constitute a majority to three and in one of those wards the black proportion would be reduced from 77 percent to 63 percent. The proposed plan would also reduce the black proportion of the fourth ward's population from 56 percent not just to the 45 percent level of 1991, but down to 35 percent of the ward's total population. These reductions appear to be significant, given that there have been several recent elections in which voting was polarized along racial lines and in which the candidate or position strongly favored by black voters lost in Ward 4 by narrow margins. These reductions also were not necessary, as is demonstrated by our analysis of the plan and by an alternative plan that Mr. Lewis Johnson attempted to introduce for the council's consideration as early as December 1996. Mr. Johnson was precluded, however, from even placing the alternative plan on the agenda by a vote of the four white city council members.

The impact of the cancellation of the 1996 election also appears to have fallen more heavily on black voters than on white voters. The 1997 Special Census indicates that both the city and Ward 4 probably had black population majorities at the time the regularly-scheduled April 1996 municipal election should have been held. Before the election was postponed, a black candidate had qualified to run against the white incumbent in Ward 4, and we are informed that the black challenger was generally thought to have a reasonable chance of winning. Thus, the failure to hold that election denied black voters the opportunity to vote for candidates of their choice throughout the city and of the opportunity possibly to elect a candidate of choice in a majority-black Ward 4.

Other factors that the Supreme Court has found to be important to an assessment of whether a jurisdiction acted with discriminatory purpose are the historical background of proposed voting changes, the sequence of events leading to the challenged decisions, any departures from normal procedural practices, and statements made by members of the decisionmaking body. 429 U.S.

at 266. These factors must be evaluated in light of the non-racial reasons for the voting changes offered by the City.

The City claims that it undertook the process of annexation in order to obtain land for new residential development and to increase (or recapture) its tax base. The City first hired a consultant to study its options for annexation in the late 1980's; however, the City took no action and let the annexation issue lie dormant for several years when that first consultant proposed a plan of annexation under which the population of the first parcel of land annexed by the City would have been approximately 70 percent black. Sources privy to the consideration of this proposal by white city officials have told us that the officials rejected this first annexation study because it proposed to annex this majority-black area first. The issue of annexation was again considered by the city council beginning in late 1992, several months after a black candidate made a strong showing in a race for the Ward 4 council seat, and this time the City's new consultant recommended the large, one-time annexation that has now been submitted for Section 5 review. While the city council initially approved this annexation unanimously, the black city council members later withdrew their support after learning that the annexation would reduce the City's black population percentage by at least three percentage points. Black council members contend that they were not provided with racial demographic data until 1994. In its Section 5 submission, the City provided a "Feasibility Study" dated September 9, 1993, which it contends was made available to council members and which contains racial demographic data concerning the annexation; however, the official copy of the relevant Appendix, on file with the city clerk, is dated November 17, 1993, after the date on which the annexation ordinance was adopted by the city council.

This historical background, the sequence of events leading to the cancellation of the 1996 election and the adoption of the redistricting plan, and the numerous procedural and substantive departures from a normal, neutral legislative process, taken together, establish a pattern of alternating action and inaction, indicative of a purpose to maintain and strengthen white control of a City on the verge of becoming majority black. First, the city attorney suddenly announced to the city council in December 1995 that the redistricting plan adopted in 1991 had problems, without further explanation. The council passed a general resolution, authorizing the attorney to "take whatever actions are necessary to see that the 1996 elections are held without any legal problems," and, apparently based on this general instruction, within weeks, the city attorney had filed lawsuits in both state and federal court seeking to stop the April election. Black council members protested that this legal action was taken without their knowledge and without specific council

authorization; however, the white council majority voted to continue these strenuous litigation efforts that eventually were successful in halting the City's own 1996 election.

Less than a month after it succeeded in having its own election canceled, in late April 1996, the city council adopted a new redistricting plan that included the large 1993 annexation. In September 1996, the City held a referendum on the April 1996 redistricting plan, as required by state law, because more than 10 percent of the city's voters had signed petitions objecting to the new plan. Although the April 1996 plan was approved by a narrow margin (in a vote that split along racial lines) in that referendum election, one month later — and while we were reviewing the April 1996 plan under Section 5 — the City contracted with the Bureau of the Census for a special census of the City which was almost certain to indicate that the April 1996 plan was malapportioned and to necessitate the drawing of yet another plan.

Almost a year elapsed while preparations were made for the special census, it was conducted, and the results were received by the City. Then, less than one month after receiving the population data from the 1997 Special Census, and without any input from the black city council members, the City's consultant presented redistricting plans to the council in October 1997. The council immediately voted along racial lines to adopt one of those plans, without allowing for any public hearing and under circumstances that indicate that the council majority had reached an agreement to adopt the plan prior to the public council meeting. By early December, more than 10 percent of the City's voters had signed petitions objecting to this October 1997 plan, and so the City was obligated under state law to schedule a special referendum election. However, the City did not do so, and, before the end of December, the City's consultant discovered mistakes in allocating 400 voters in the October 1997 plan that required a new, revised plan. Once again, the consultant developed the revised plan without any input from the black city council members or the public. A council meeting was scheduled during the holidays (on December 30, 1997) with just four days notice. At that meeting, the council voted along racial lines to approve a revised plan, with the white majority truncating all discussion and summarily overruling requests from almost a dozen city residents for time to review and comment on the new December 1997 plan. As with the adoption of the October 1997 plan, the circumstances in December 1997 indicated that the council majority had reached an agreement to adopt the plan prior to the public council meeting.

Once again, numerous city residents signed petitions objecting to the redistricting plan, but the City has not scheduled a referendum election. Instead, the City had hurriedly

submitted the December 1997 plan to the governor for certification just one day after the last newspaper advertisement of the plan, without waiting even a week to see whether the same city residents who objected to the very similar October 1997 plan might also object to the December 1997 plan.

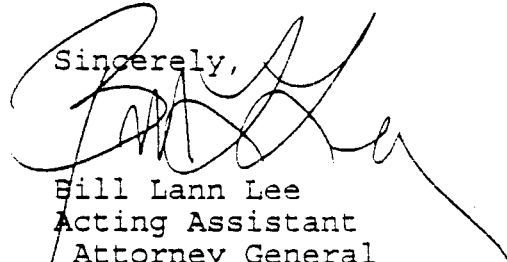
Thus, an examination of the factors outlined by the Supreme Court in Arlington Heights shows that there is substantial direct and circumstantial evidence of discriminatory purpose with regard to the proposed changes. The annexation and redistricting plan, in combination, would significantly reduce minority voting strength and the cancellation of the 1996 election may well have impaired the ability of blacks to elect a candidate of their choice, in light of the fact that recent elections in the City have been extremely polarized along racial lines. This discriminatory impact, together with the other relevant factors, indicates that the submitted changes were undertaken with a purpose of stopping the growth of black voting strength in the city and, indeed, of reducing black voting strength back to and below the level that existed in 1990. We have some direct evidence of the City's intent to maintain control of the City by whites.

As noted above, 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. 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 that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the annexation, cancellation of the election, and redistricting plan.

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 changes neither have 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. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed voting changes continue to be legally unenforceable insofar as they affect voting. Clark v. Roemer, 500 U.S. 646 (1991); Dotson v. City of Indianola, 514 F. Supp. 397, 403 (N.D. Miss. 1981), aff'd mem., 455 U.S. 936 (1982); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Grenada plans to take concerning this matter. If you have any questions, you should call Donna M. Murphy (202-514-6153), Deputy Chief of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Lann Lee", written over the typed name.

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division