**U.S. Department of Justice**

Civil Rights Division

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

October 4, 2011

Tommie S. Cardin, Esq.
Butler, Snow, O'Mara, Stevens, & Cannada
Suite 1400
1020 Highland Colony PKWY
Ridgeland, MS 39157

Dear Mr. Cardin:

This refers to the 2011 redistricting plan for the board of supervisor and election commissioner districts for Amite County, Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your response to our June 28, 2011, request for additional information on August 5, 2011; additional information was received through September 24, 2011.

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the county's previous submissions. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed changes have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group. *Georgia v. United States*, 411 U.S. 526 (1973); *Procedures for the Administration of Section 5 of the Voting Rights Act*, 28 C.F.R. 51.52 (c). For the reasons discussed below, I cannot conclude that the county's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2011 redistricting plan for the board of supervisors and the county election commission.

According to the 2010 Census, the county has a total population of 13,131 persons, of whom 5,414 (41.2%) are African American. Of the 10,176 persons of voting age, 4,032 (39.6%) are black persons. The board of supervisors is elected from five single-member districts; election commissioner districts must be coterminous with the supervisor districts. Although not required, the county school board has used the same districts.

The voting change at issue must be measured against the benchmark practice to determine whether it would "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer* v. *United States*, 425 U.S. 130, 141 (1976). Under the benchmark plan, there are two districts, Districts 2 and 3, in which minority residents have the ability to elect a candidate of choice to office. African American voters in District 2 have consistently elected candidates of their choice to the board of

supervisors, the election commission, and the school board. African American voters in District 3 have consistently elected candidates of their choice to the election commission and the school board. In terms of demographics, black persons comprise 55.3 percent of District 2's voting age population and 53.9 percent of the total voting age population in District 3.

The proposed plan slightly increases the black population in District 2, maintaining the ability to elect for minority voters that existed in the benchmark plan. The proposed plan reduces the black population levels in District 3 to the extent that our analysis indicates the existing ability to elect in the benchmark plan has been eliminated. The county has informed us that ability to elect now exists in proposed District 5 because it has a similar demographic profile. Our determination as to whether a district has the ability to elect is not based on census numbers in isolation. *Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act*, 76 Fed Reg. 7470, 7471 (2011). We look to the voting history in both the county and in the district at issue. Such considerations are especially pertinent to our analysis of proposed District 5 here.

Our election analysis indicates that black voters in proposed District 5 turnout to vote at lower levels and exhibit lower levels of electoral cohesiveness than is present in benchmark District 3. We also note there has been a nearly complete lack of any minority political activity for the past two and half decades in the area that would comprise proposed District 5. This means potential candidates for elective office as well as the necessary accompanying support structure for a campaign are not currenly present in this area and would need to be developed. This contrasts with the existing political activity and structure that is present in benchmark District 3. The absence of such a structure would have a negative impact on the ability of minority voters to participate effectively in the political process. In view of all these factors, the county has not produced sufficient evidence to conclude that the proposed plan is not retrogressive.

With respect to the county's ability to demonstrate that the plan was adopted without a prohibited purpose, the starting point of our analysis is *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). In *Arlington Heights*, the court provided a non-exhaustive list of factors that bear on the determination of discriminatory purpose, including, but not limited to, the disparate impact of the action on minority groups; the historical background of the action; the sequence of events leading up to the action or decision; the legislative or administrative history regarding the action; departures from normal procedures; and evidence that the decision-maker ignored factors it has otherwise considered important or controlling in similar decisions. *Id.* at 266-68.

Our analysis of the evidence precludes a determination that the county has met its burden of showing that the proposed plan was not adopted, at least in part, with a discriminatory purpose. The shift of a district in which black voters had the ability to elect a candidate of choice from District 3 to District 5 was not necessary to adhere to the county's stated redistricting principles or any other traditional redistricting criteria. And the retrogressive impact of the plan was easily avoidable, as demonstrated by alternative Plan 5, which the supervisors considered, but did not adopt.

In addition, there is evidence that the shift of minority population from District 3 to District 5 was motivated by a desire to reduce the minority population and minority voting strength in District 3. There was an increasing likelihood that, absent the changes in the proposed plan, black voters would elect a candidate of choice in District 3. The evidence we have obtained – including from interviews with the decision makers in the redistricting process – indicates that the decision to reallocate minority population into District 5 and out of District 3 was intended, at least in part, to avoid that result. The fact that District 5 does not provide minority voters with an ability to elect candidates of choice serves only to support our determination concerning the county's motivation in this regard. *LULAC* v. *Perry*, 548 U.S. 399 (2006).

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); 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 county's 2011 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 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. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the United States District Court for the District of Columbia is obtained, the submitted change continues to be legally unenforceable. *Clark* v. *Roemer*, 500 U.S. 646 (1991); 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 that Amite County plans to take concerning this matter. If you have any questions, you should contact Robert S. Berman (202/514-8690), a deputy chief in the Voting Section.

Sincerely,

Thomas E. Perez
Assistant Attorney General