



U. S. Department of Justice

Civil Rights Division

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Washington, D.C. 20530

APR 3 0 2012

Everett T. Sanders, Esq.  
City Attorney  
City of Natchez  
P.O. Box 565  
Natchez, Mississippi 39121

Dear Mr. Sanders:

This refers to the 2011 redistricting plan for the City of Natchez in Adams 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 February 21, 2012, request for additional information on February 28, 2012.

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 city's previous submissions. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing 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 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 of 1965*, 28 C.F.R. 51.52(c). For the reasons discussed below, I cannot conclude that the city's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the city's proposed 2011 redistricting plan.

According to the 2010 Census, the city's total population is 15,792, of whom 9,237 (58.5%) are black; its voting age population is 12,054, of whom 6,522 (54.1%) are black. The city is governed by a mayor, elected at-large, who votes only in the case of a tie, and a six-member board of aldermen, who are elected from single-member wards by majority vote to serve four-year concurrent terms.

Under the benchmark plan, black voters have demonstrated the ability to elect candidates of choice in Wards 1, 2, and 4, with black voting age population percentages of 68.9, 97.5, and 69.1, respectively. In Ward 5, black persons constitute 57.6 percent of the total population and 52.6 percent of its voting age population, but have not elected a candidate of choice in aldermanic elections.

The proposed plan retains Wards 1, 2, and 4 as ability-to-elect wards. The black voting age population percentage in each of these three wards increases as compared to the benchmark. Meanwhile, the black total and voting age populations in Ward 5 are reduced by 5.3 and 6.6 percentage points, respectively, resulting in Ward 5 losing the black majority in its voting age population and decreasing its black total population to 52.3 percent.

With respect to the city's ability to demonstrate that this change was adopted without a prohibited purpose, the starting point of our analysis is the framework established in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). There, the Supreme Court provided a non-exhaustive list of factors that bear on the determination of discriminatory purpose, including the 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.

We start with the city's redistricting history, which shows a pattern of the city modifying ward lines to limit black voting strength. On February 21, 1984, the Attorney General interposed an objection under Section 5 to the city's proposed post-1980 redistricting plan because it made numerous unnecessary population shifts that artificially limited black voting strength in the city. That plan maintained black percentages at levels identical to the benchmark in Wards 1 and 4, even though adherence to non-racial redistricting criteria would have resulted in an increase in black voting strength in each.

Over the past several decades, the black population in both the city as a whole, as well as the area encompassing Ward 5, has been increasing. Indeed, each time the decennial Census data has been released since 1990, black persons in Ward 5 have comprised a significant majority of the total population in the benchmark district. And in each redistricting cycle since then, the city has taken steps to reduce the black population share in Ward 5. The city's 1992 redistricting plan reduced the black population percentage in Ward 5 from 54.9 percent in the benchmark to 49.3 percent in the proposed plan. The city's 2002 redistricting plan also reduced the black population in Ward 5 from 56.3 percent in the benchmark to 48.3 percent in the proposed plan. And this submission, the city's 2011 redistricting plan, follows that same pattern and reduces the black total population in Ward 5 from 57.6 percent to 52.3 percent, with a resulting reduction in black voting age population from 52.6 percent to 46.0 percent. Most significantly for the instant analysis, benchmark Ward 5 was within constitutional population limits after the 2010 Census and did not need to be changed at all. Because it appears that the city has intentionally and unnecessarily reduced the black voting age population in Ward 5 under circumstances that suggest the black population in Ward 5 would otherwise have been on the verge of exercising an ability to elect their candidates of choice, we cannot conclude that the city has met its burden of demonstrating the absence of any discriminatory purpose.

The city's rationale for the change before us does not withstand scrutiny. According to the city's demographer, black population had to be moved from Ward 5 in order to maintain the black population percentages in Wards 1, 2, and 4 so as to avoid retrogression. That claim is a misapplication of the retrogression standard, which does not operate as a categorical prohibition on any reduction in the black population percentage in an ability-to-elect ward. Rather, as both the text of Section 5 and the Attorney General's procedures for its administration make clear, the retrogression standard in this context prohibits those changes that have the effect of diminishing, on account of race, the ability of any citizens to elect their preferred candidates of choice. 42 U.S.C. 1973c(b); 28 C.F.R. 51.52. It is not plausible to contend that adding black population to the three existing ability-to-elect wards in the benchmark plan – especially Ward 2, with a 97.5 percent black voting age population – was necessary to avoid retrogression in those wards; our analysis has determined that each could experience a decrease in the black share of the voting age population while still maintaining their ability-to-elect status. Indeed, in past city elections, black voters have demonstrated an ability to elect candidates of their choice in wards with a black voting age population of 67 percent.

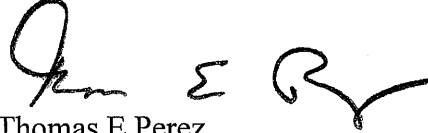
As we have indicated in our *Guidance Concerning Redistricting Under Section 5 of the Voting Act*, 76 Fed. Reg. 7470, 7472 (Feb. 9, 2011), we may devise an illustrative plan as part of our analysis. We have done so in this instance. The illustrative plan we have developed maintains Wards 1, 2, and 4 at similar or higher black population percentage levels than existed in the benchmark, maintains Ward 5 at its benchmark level, and achieves a smaller overall population deviation range than the adopted plan. This illustrative plan demonstrates that the city's explanation – that reductions in the black population share in Ward 5 were necessary to maintain the black population share in the three ability-to-elect districts – is pretextual. The city's demographer was in fact presented with an alternative plan by the Natchez Chapter of the NAACP that not only maintained the black population shares in Wards 1, 2, and 4, but also increased the black population share in Ward 5 to ability-to-elect levels, so the city was aware that such a result was feasible.

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 will have 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 the city's burden has been sustained in this instance.

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 changes continue 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 the City of Natchez 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,

A handwritten signature in black ink, appearing to read 'Tom E Perez', with a stylized flourish at the end.

Thomas E Perez  
Assistant Attorney General