U.S. Department of Justice

Civil Rights Division

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

27 OCT 1981

Fabian Palomino, Esq.
Counsel, New York City Council
Redistricting Commission
City Hall
New York, New York 10007

Dear Mr. Palomino:

This is in reference to your submission to the Attorney General, pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c, of Local Law 47 (1981) of the City of New York providing for the increase in the number of single-member councilmanic districts, and the redistricting of the 35 single-member districts and related election district changes occasioned by the local law. Additional information was received on September 21, 1981. Since that date, the city has supplemented the submission with further information. The submission was completed on the date of the receipt of the last supplement on October 19, 1981.

We have given careful consideration to the materials which the city has submitted as well as information and comments from interested parties and information contained in other Section 5 submissions made by the city. The Attorney General does not interpose an objection to the increase in the number of members of the city council elected from single-member districts. However, on the basis of our review of the city's submission, available demographic data and comments received concerning this submission, we are unable to conclude that the city has satisfied its burden of proving that the submitted plan, as drawn, has neither the purpose nor the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group.

Consequently, the Attorney General does interpose an objection to the councilmanic redistricting plan involving Bronx, Kings and New York Counties. Furthermore, because the proposed changes in the election districts are dependent on the objectionable councilmanic district changes, the Attorney General must also interpose an objection to the changes in election districts.

As you know, under Section 5, the city bears the burden of proving the absence of both discriminatory purpose and effect in the proposed councilmanic redistricting plan. City of Rome v. United States, 446 U.S. 156, 183 n.18 (1980); Beer v. United States, 425 U.S. 130, 140-41 (1976). In order to prove the absence of a racially discriminatory effect, the City of New York must demonstrate, at a minimum, that the proposed councilmanic redistricting plan would not lead to a retrogression in the position of racial minorities with respect to the effective exercise of their electoral franchise. Beer v. United States, supra, 425 U.S. at 140-41. While the city is under no obligation to maximize minority voting strength, the District Court for the District of Columbia has required that the city demonstrate that the plan "fairly reflects the strength of [minority] voting power as it exists." Mississippi v. United States, 490 F. Supp. 569, 581 (D.D.C. 1979), citing Beer v. United States, supra, 425 U.S. at 139 n.11 and 141; and City of Richmond v. United States, 422 U.S. 358, 362 (1975).

In studying the issue of retrogression, we have compared the projected impact of the proposed plan with the expected election results if the city were to continue to conduct elections under the 1977 plan. While we recognize that the city disagrees with our use of 1980 Census data to conduct this analysis, we are obligated to conduct the analysis "from the perspective of the most current available population data," City of Rome v. United States, supra, 446 U.S. at 186, and the 1980 Census data provides the most reliable basis for measuring the projected results of implementation of the new plan as compared with continued use of the 1977 plan. Also, because the existing councilmanic districts are severely malapportioned in light of the

dramatic population shifts which have occurred in the last decade, we have studied possible alternative reapportionment plans faithful to nonracial criteria established by the city (i.e., compact, contiguous districts; efforts to avoid interborough districts; efforts to maintain existing boundaries to the extent possible). Cf. Wilkes County v. United States, 450 F. Supp. 1171, 1178 (D.D.C. 1978), aff'd, 439 U.S. 999 (1978); Donnell v. United States, C.A. No. 78-0392 (D.D.C., July 31, 1979), aff'd, 444 U.S. 1059 (1980).

Our analysis, under both methods, has resulted in a conclusion that the proposed plan will lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise and that the plan does not fairly reflect minority voting strength as it currently exists. As explained below, the retrogression found to exist in each covered county results primarily from the city's departure from its own nonracial plan-drawing criteria. Since no nonracial justification has been offered for these departures, and in light of the obvious effect, we are also unable to conclude that the city has satisfied its burden of demonstrating that the plan was drawn without a racially discriminatory purpose. Donnell v. United States, supra, slip op. at 10; Mississippi v. United States, supra, 490 F. Supp. at 581-82.

Our analysis of relevant demographic data and election returns has revealed significant minority concentrations in the three covered counties and the existence of a clear pattern of racial bloc voting. These findings do not support the city's assertions that the minority population is so widely dispersed as to preclude the creation of additional minority districts under a fairly drawn plan and that racial bloc voting is not apparent in elections in the city. Our analysis of the plan as it affects each covered county follows.

The single-member districts in the northern portion of New York County do not appear to be drawn in accordance with the city's stated objectives. For example, District 6 is unusually shaped, is six miles long and, for almost half its length, it measures only three blocks wide. Also, the plan for New York County proposes a second interborough district between Bronx County and New York County, when the population characteristics of New York County would allow seven districts wholly within Manhattan. While these deviations from the city's stated plan-drawing criteria do not, by themselves, constitute a violation of the Section 5 standard, each deviation has resulted in a fragmentation of minority residential areas and a corresponding dilution of minority voting strength. Thus, if District 6 would have been drawn compactly to include the northern portion of Manhattan, it seems likely that that district would be 65% minority or more. Similarly, if interborough districts between Bronx and New York Counties were not used, the likely result would be increased minority voting strength in both counties. In sum, our analysis indicates that if the city's stated objectives were utilized in Manhattan, seven districts wholly within Manhattan could be drawn and three of those districts would be 65% minority or greater.

With respect to Bronx County, a significant minority population concentration in the Morris Heights-Fordham section of the county is divided among four of the six councilmanic districts, thus minimizing minority voting strength by frustrating the creation of an additional district in which minority voters would have a fair opportunity to elect a candidate of their choice. We note that District 13, one of the fragmenting districts, is not compact but rather is drawn in a convoluted manner, and the unusual shape of the district contributes to the fragmentation of minority voting strength. We have not been presented with any compelling justification for such fragmentation of a substantial minority population concentration, and our analysis reveals none. Moreover, it appears that other rational and compact redistricting alternatives are available to achieve population equality without such a prohibited discriminatory impact. Also, as mentioned above, the elimination of interborough districts between New York and Bronx Counties would not only further the city's stated objectives but would also help avoid the dilution of minority voting strength.

In Kings County, we have noted a similar departure from nonracial plan-drawing criteria, which departure has resulted in a fragmentation and dilution of minority voting strength. District 24, rather than being compact, is approximately five miles long (north-south) and, in places, less than one-half mile wide. Our analysis, as well as information we have received, indicates that the configuration of this district results from efforts to maintain neighboring District 25 as a district which would be controlled by white voters. If compact districts were utilized in this area of the county (e.g., districts which run on an east-west axis as District 25 previously ran) it appears likely that the minority community in Kings County would have a reasonable opportunity to elect candidates of its choice in at least four districts; as a result of the city's departure from its nonracial plan-drawing criteria, the minority community in Kings County has a reasonable opportunity of electing candidates of its choice in only three districts. Additionally, if the unnecessary fragmentation of other minority population concentrations (e.g., East New York) could be avoided, the end result might be that minority voters would have a realistic opportunity to elect candidates of their choice in five districts.

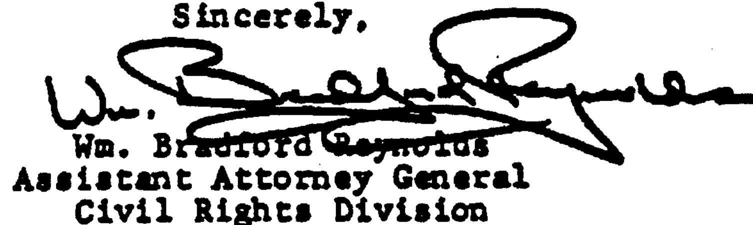
Under these circumstances, I am unable to conclude, as I must under the Voting Rights Act, that the presently proposed councilmanic district lines for Bronx, Kings and New York Counties were drawn without any discriminatory racial purpose or effect. Accordingly, I must, on behalf of the Attorney General, interpose an objection to Local Law 47 (1981) of the City of New York insofar as Bronx, Kings and New York Counties are concerned.

Of course, as provided by Section 5 of the Voting Rights Act of 1965, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor the effect of denying or abridging the right to vote on account of race, color or

membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or a judgment from the District Court for the District of Columbia is obtained, the effect of the objection by the Attorney General is to make the reapportionment of the New York City Council legally unenforceable with respect to Bronx, Kings and New York Counties.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the City of New York plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Section. Because this decision pertains to the issues raised in Herron v. Koch, No. 81 Civ. 1956 (E.D.N.Y.); Andrews v. Koch, No. 81 Civ. 2542 (E.D.N.Y.); and Gerena-Valentin v. Koch, No. 81 Civ. 5468 (S.D.N.Y.), I am taking the liberty of sending a copy of this letter to the members of the three-judge district court. Moreover, in light of requests which we have received for a copy of the decision in this matter, we are making copies of the letter available on request.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Edward N. Costikyan