U.S. Department of Justice

Civil Rights Division

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

June 22, 1982

Thomas P. Zolezzi, Esq.
Special Counsel
State Board of Elections
99 Washington Avenue
Albany, New York 12210

Dear Mr. Zolezzi:

This is in reference to Chapters 111, 112, 113, 114, 115, 130, 323 and 324 of the Laws of 1982 of the State of New York, which provide for the reapportionment of United States Congressional, New York State Senatorial and Assembly Districts, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c.

The submission of Chapters 111 through 115 was initiated on May 20, 1982. Additional information concerning the Assembly reapportionment, as well as other pertinent information, was received on May 26, 1982. The supporting demographic data and redistricting maps for the Congressional and Senate plans were received on May 27 and June 3, 1982 respectively. Chapter 130, pertaining to the Senate redistricting outside the three counties covered by the special provisions of the Voting Rights Act, was received on June 1, 1982. Chapters 323 and 324 which amend the Congressional, Senate and Assembly reapportionment plans were received on June 17, 1982. At your request, this submission has been given expedited consideration.

We have given careful consideration to the materials you have submitted, as well as comments and information provided by a number of other interested parties, and the relevant decisions of the federal courts. Under Section 5, the submitting authority must show that a voting change does not have a discriminatory purpose and would not "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); see also, City of Richmond v. United States, 422 U.S. 358 (1975). The application of these principles is considered separately for each of the proposed reapportionment plans.

The Congressional Plan

In considering the Congressional reapportionment plan, we note that the proposed Congressional District 11 is drawn in a meandering and convoluted fashion. Although we understand that the district was developed in recognition of the growing Hispanic population in New York City, the creation of a district out of three separate, non-compact and, by some standards, non-contiguous areas represents a marked departure from commonly accepted districting criteria, see Connor v. Finch, 431 U.S. 407, 413 (1977), and is, in our view, violative of the standards governing application of the Voting Rights Act. Moreover, the extraordinary effort in this instance to enhance the voting strength of the Hispanic population was made at the expense of black persons living in Kings County, whose voting strength has been, as a consequence, diluted.

In this connection, the creation of District 11 required a radical reconfiguration of districts in northern and central Kings County, leading to an overconcentration of black population in District 12 and what appears to be a needless fragmentation of black communities in drawing the lines for District 10. Alternative plans that were before the Legislature provided a redistricting for these areas that would have fairly reflected the voting strength of Hispanic and black residents without resorting to a configuration designed to maximize the electoral position of either one. Indeed, our analysis of racial and ethnic concentrations in Kings County--especially in light of the alternative redistricting plans offered, including one adopted by the New York Senate--suggests that two majority black districts within Kings County would have been created by a logical configuration, one which would more nearly provide "fair representation to the members of those racial groups who are sufficiently numerous and whose residential patterns afford the opportunity of creating districts in which they will be in the majority." United Jewish Organizations v. Carey, 430 U.S. 144, 168 (1977); see also, Connor v. Finch, supra, 431 U.S. at 428 (concurring opinion of Justice Blackmun).

Accordingly, we must conclude that the State has failed to demonstrate that the highly irregular shape of proposed Congressional District 11 would not have the effect of adversely impacting the voting rights of a protected minority.

The Assembly Plan

Overall, the proposed Assembly reapportionment plan for the three covered counties will result in a clear retrogression of minority voting strength within the meaning of Beer v. United States, supra. Our analysis indicates that approximately 43 percent of the current Assembly seats in the three covered counties have combined minority (i.e., black and Hispanic) populations in excess of 65 percent. Under the proposed plan, only about 36 percent of the Assembly seats will have combined minority populations of 65 percent or greater even though the percentage of the affected minorities has increased in the past ten years. We find that this retrogression results primarily from redistricting criteria used by the New York Legislature, namely that minority districts contain minority concentrations which are calculated to insure electability by including no less than 80 percent minority population. Such an approach, which unnecessarily packs large numbers of minorities into a single district, seems more attentive to the re-election of incumbents than to the development of a plan that fairly reflects minority voting strength as it exists. We therefore reject the Legislature's 80 percent standard as one not permitted by the Voting Rights Act.

We would further note that the State Assembly districts in Bronx County appear not to be drawn in accordance with standard reapportionment criteria (e.g., compactness, contiguity and nondilution of minority voting strength). For example, a significant minority population concentrated in the Williamsbridge-Wakefield area of northern Bronx County is divided, thus minimizing the voting strength of that community and frustrating the possible creation of an additional minority Assembly district in that area. Moreover, the districts involved, Assembly Districts 79 and 82, are drawn in a most irregular configuration, which has not been satisfactorily explained by the State.

We have also detected needless fragmentation of other predominantly Hispanic population concentrations, (i.e., University Heights, Union Port and the southernmost tip of Bronx County necessitated by the creation of District 70 as an intercounty district), which may have resulted in the loss of a second minority district in Bronx County. Similarly, there would appear to be a sufficient Hispanic population in northern Kings County to afford the opportunity of creating two minority districts in that area in which Hispanics would have a substantial influence, instead of dispersing those concentrations into four districts (Districts 40, 50, 54 and 55). Our analysis, therefore, does not bear out the State's claim that departures from the normal reapportionment criteria of compactness and contiguity in developing the Assembly reapportionment plan were essential to preserve minority voting strength. Nor are we persuaded that any compelling need exists to create intercounty Districts 62 and 70. Indeed, our analysis indicates that by crossing county lines, the minority population in that area was adversely affected and would have been better served if the counties had remained intact.

The Senate Plan

The proposed Senate Plan is similarly characterized by irregularly drawn districts that appear to be propelled by incumbency concerns at the expense of effective minority representation and other reapportionment criteria. The configuration of Senate Districts 30, 31 and 32 in Bronx County is particularly offensive and needlessly fragments minority concentrations that would not have been separated under normal reapportionment criteria of compactness and contiguity. District 32, for example, has a total of 174 sides, see Gomillion v. Lightfoot, 364 U.S. 339, 340 (1959). In light of the substantial potential for confusion of minority voters and candidates in the electoral process which will likely result from the racially gerrymandered district configurations, we are persuaded that use of more compact, fairly drawn alternatives would better advance the State's objective of recognizing minority voting strength, without this potential adverse racial impact.

In Kings County, we observe that the proposed Senate districts are also noncompact and have the effect of fragmenting existing minority population concentrations, notably East New York and East Flatbush. We have not been provided adequate justification for that result. If compact districts were utilized in the substantial minority population concentrations in central and northern Kings County (i.e., districts which run on an east-west axis), it would appear that the minority community there would have a reasonable opportunity to elect senatorial candidates of their choice in four districts which reflect the voting strength of the existing Hispanics and black populations more accurately than does the proposed plan.

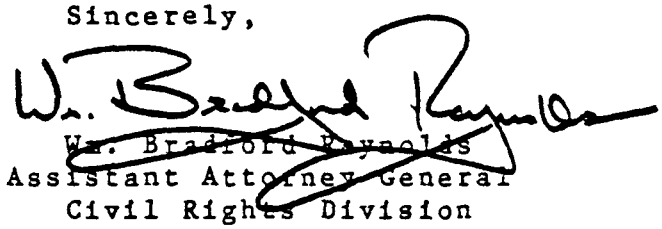
In view of all of these circumstances, we are unable to conclude that the State has satisfied its burden of showing that the proposed Congressional, State Senate and Assembly reapportionment plans, as drawn, in Bronx, Kings and New York Counties do not have the purpose or effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. Accordingly, I must, on behalf of the Attorney General, interpose objections to the reapportionments of the United States Congress, the New York Senate and Assembly insofar as Bronx, Kings and New York Counties are concerned.

Of course, as provided by Secton 5 of the Voting Rights Act, 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 the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a langugage minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. §51.44) permit you to request the Attorney General to reconsider the objections. However, until

the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objections by the Attorney General is to make the reapportionments of United States Congressional, New York State Assembly and Senate districts legally unenforceable.

We are, however, mindful of the election calendar for the State of New York, and fully appreciate the desire of the Legislature to resolve this matter expeditiously. Accordingly, this office stands ready to devote the time and resources necessary to assist the Legislature in any effort it undertakes to meet the concerns expressed in this letter. Since litigation concerning the reapportionment of United States Congressional, State Senate and Assembly districts in the State of New York is now pending (Flateau v. Anderson, 82 Civ. 0876 (VLB) (S.D. N.Y.)), I am taking the liberty of providing a copy of this letter to the Court.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

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Washington, D.C. 20530

28 JUN 1982

Honorable Stanley Fink
Speaker, New York State Assembly
State Capitol
Albany, New York 12248

Dear Mr. Fink:

On June 22, 1982, an objection was interposed to the the 1982 reapportionment for the United States Congress for Kings, Bronx and New York Counties, New York pursuant to the provisions of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. The basis for the objection was the proposed Congressional District 11, a district which was created by linking New York and Kings County in a meandering and convoluted fashion without regard for commonly accepted redistricting criteria. The result of the proposed configuration for Congressional District 11 was a dilution of minority voting strength in Kings County.

Since the Section 5 objection was interposed to the Congressional plan, two questions have been raised about the legislative effort to correct the objectionable features of the plan. The first is whether the objection precludes the New York legislature from adopting an interborough district which would link northern Kings County and the lower east side of New York County, both areas with significant Hispanic populations. The second is whether the New York legislature is required to draw two majority black districts within Kings County.

In our view, the Voting Rights Act neither precludes the former configuration nor requires the latter result. What the Act does require is that the modified plan fairly reflects existing minority voting strength in the area and that the creation of any interborough district does not fragment the obvious concentrations of black and Hispanic voters in Kings County.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division