U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

JUL 19 1991

Judith Reed, Esq.
New York City Districting Commission
Suite 1616
11 Park Place
New York, New York 10007

Dear Ms. Reed:

This refers to the 1991 districting plan for the New York City Council in Bronx, Kings and New York Counties, New York, adopted pursuant to the New York City Charter and submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on June 18, 1991; supplemental information was received on June 20, July 12, 16, 18, and 19, 1991.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. At the outset, we would note that as it applies to the redistricting process, the Voting Rights Act requires the Attorney General to determine whether the submitting authority has sustained its burden of showing that each of the legislative choices made under a proposed plan is free of racially discriminatory purpose or retrogressive effect and whether the submitted plan will result in a clear violation of Section 2 of the Act. In the case of a citywide districting of the magnitude of the City of New York, this examination requires us not only to review the overall impact of the plan on minority voters, but also to understand the reasons for and the impact of each of the legislative choices that were made in arriving at this particular plan.

In making these judgments, we apply the legal rules and precedents established by the federal courts and our published administrative guidelines. See, e.g., 28 C.F.R. 51.52(a), 51.55, 51.56. For example, we cannot preclear those portions of a plan where the Districting Commission has deferred to the interests of incumbents while refusing to accommodate the community of interest shared by insular minorities. See, e.g., Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Such concerns are frequently related to the needless packing of minority constituents into a minimal number of districts in which

they can expect to elect candidates of their choice. See 28 C.F.R. 51.59. We endeavor to evaluate these issues in the context of the statutory and demographic changes which compelled the particular jurisdiction's need to redistrict (id.). Finally, our entire review is guided by the principle that the Act insures fair election opportunities and does not require that any jurisdiction attempt to guarantee racial or ethnic proportional results.

We have reviewed the council plan in light of these principles. In our view, the New York City Districting Commission was faced with a job of staggering proportions, namely, to divide a city of over seven million people into 51 new council districts while addressing the historical inability of the many minority communities in the city to elect candidates of their choice. We also know that this enormous task necessarily involved many compromises and difficult choices; yet, the Commission has made great strides in drawing council districts which greatly enhance minority voting strength overall. In many areas of the city minority voters will now have an opportunity to participate in the political process and to elect candidates of their choice to office for the first time. Thus, we have concluded that most of the districting plan satisfies the preclearance requirements of Section 5.

We are concerned, however, with choices made throughout the districting process with regard to Hispanic voters. The 1990 Census reveals that the minority population of the city has increased dramatically, particularly the Hispanic population. However, it seems that in at least two areas of the city, the inappropriate choice was made to draw particular districts at the expense of Hispanic voting strength causing the Hispanic electorate to be unfairly underrepresented on the council. In one area, the proposed configuration of district boundary lines appears to have been drawn in such a way as to minimize Hispanic voting strength. Specifically, we refer to the overconcentration of Hispanic population in the Williamsburg area in Brooklyn (District 34) at the expense of Hispanic voters in the adjacent district in Bushwick and Cypress Hills (District 37). We are aware that the Commission rejected available alternatives that would likely result in an additional district which would provide Hispanic voters in Bushwick and Cypress Hills an equal opportunity to participate in the political process and to elect candidates of their choice to office. While we have noted the Commission's explanation that District 34 was designed to protect an incumbent by drawing larger numbers of Hispanic voters into his district, and even though incumbency protection is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of Hispanic voters in the adjoining district. Garza v. County of Los Angeles, 918 F.2d at 771; Ketchum v. Byrne, 740 F.2d at 1408-09.

Additionally, with regard to proposed District 8 in the East Harlem-Bronx area, serious allegations have been raised

that, as in District 37, a series of boundary line changes were made over the course of the districting process which ultimately resulted in a district that was purported to be an Hispanic district but which will likely result in a district in which Hispanic voters will not be able to elect a candidate of their choice. We have reviewed carefully the conflicting factual information surrounding this district and conclude that the city has not met its burden in this area.

Although we are aware that Queens County is not covered by the special provisions of Section 5, the alleged circumstances surrounding the boundary lines chosen for District 21 provide information relevant to our review of the concern that choices made throughout the process consistently disfavored the Hispanic voters, causing the Hispanic voting strength in the city to be unnecessarily limited overall.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the 1991 districting plan for the City of New York, only with regard to the manner in which it treats the Williamsburg and Bushwick areas and the District 8 (East Harlem-Bronx) area discussed above.

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 1991 districting plan for the City of New York has neither 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. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1991 redistricting plan for the City of New York continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

We are aware that the city is anxious to conduct elections in 1991 in an effort to implement the newly acquired gains in minority voting potential and that the Commission is ready to reconvene quickly to make revisions without disrupting this year's election schedule. We applaud this goal and I have instructed my staff to work closely with you in an effort to remedy these areas of concern. We stand ready to prioritize the city's new submission in order to finalize the Section 5 review process in a very short period.

Finally, I feel compelled to comment on one factor that may have played a significant role in drawing some of the districts (particularly District 45). According to published reports, the Commission believed that to obtain preclearance for the districting plan, it was required by Department of Justice policy to remove current councilmembers from any district in which

minorities comprise a majority of the population, unless that incumbent also was a member of the same minority. The proposition that only minority officeholders may effectively represent a minority constituency does not accurately state the law or the policy of the Justice Department. We review each districting plan based upon the particular circumstances in which it was adopted and will be implemented. While the treatment of incumbents may sometimes be relevant to proper analysis (see Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985)), the race of the incumbent does not automatically determine whether that individual is, or is not, the candidate of choice of minority voters. See Thornburg v. Gingles, 478 U.S. 30, 68 (1986) ("it is the status of the candidate as the chosen representative of a particular racial group, not the race of the candidate, that is important"); Citizens for a Better Gretna v. City of Gretna, 834 F.2d 496 (5th Cir. 1987) cert. denied, 109 S. Ct. 3213 (1989). The Voting Rights Act strives to ensure that minority voters have an equal opportunity to "elect candidates of their choice." It should never be used as an excuse for denying them the ability to exercise that right because of their race or the race of a particular candidate. I have concluded that the districting of these districts (including District 45) does not require an objection under the preclearance standards of Section 5 of the Voting Rights Act. We express no views with regard to the aggrieved incumbent candidate's constitutional claims presently pending in federal court. Because the Commission appears to have made its decisions about these districts based upon a misunderstanding of the law and the Department's views, I would ask that you correct the record by advising the commissioners of this Department's actual legal position for their appropriate consideration.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of New York plans to take concerning these matters. If you have any questions, you should call Richard B. Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division