



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Mr. L. C. Lutz
Superintendent, West Baton
Rouge Parish School Board
670 Rosedale Street
Baton Rouge, Louisiana 70767

8 NOV 1982

Dear Mr. Lutz:

This is in reference to the reapportionment of the school board and the increase in the number of board members from eight to nine in West Baton Rouge Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on September 7, 1982.

The Attorney General does not interpose any objection to the increase in the number of board members. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With respect to the reapportionment of the school board, we have considered carefully the information you have provided, as well as relevant Census data and comments from other interested parties. At the outset, we note that the proposed plan provides for a 64.2 percent black district in the area south of the Intracoastal Canal and a two-member district (No. 6) in the area north of the canal (excluding Port Allen) which would appear to recognize fairly black voting strength and, thus, to meet Section 5 requirements. However, with

respect to the Port Allen area (proposed District 3), we have not been able to reach a like conclusion.

Our analysis reveals that, apparently, early in its consideration of its redistricting the school board determined to use a single-member districting system of elections for its newly proposed nine members and pursuant to its instructions six such plans were drafted by the Public Affairs Research Council (PAR) and presented to the board, as was a seventh single-member district plan devised by the NAACP. Each of those nine member single-member district configurations contained at least one district in the Port Allen area from which blacks would have had a realistic opportunity to elect a representative of their choice. We further note that the failure of the board to agree on any of those plans apparently related to whether there would be one or two majority black districts in the City of Port Allen. Our analysis shows further that this issue apparently was resolved by the adoption of the submitted multi-member district for the City of Port Allen, a system which would not appear to afford blacks a reasonable expectation for electing a candidate of their choice to any of the three board positions in the district.

Under these circumstances, we are unable to conclude that the board has shown the decision not to adopt a nine member single-member district plan to be free from impermissible racial considerations as required by Section 5. Accordingly, on behalf of the Attorney General, I must interpose an objection to this reapportionment plan.


As expressed by the Supreme Court in the City of Richmond v. United States, 422 U.S. 358, 378 (1975), "An official action, . . . taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute." As recently as this year in Busbee v. Smith, Civil Action No. 82-0665 (D. D.C. July 22, 1982), the court, under circumstances similar to those involved here, found that the submitting authority had not sustained its burden of showing the absence of a discriminatory purpose. It there made clear, citing City of Rome v. United States, 446 U.S. 156, 172 (1980), that even if a redistricting plan has no discriminatory "effect," it must fail "if it is adopted with an invidious discriminatory purpose constituting a denial of equal protection" (Conclusion No. 11). See also Beer v. United States, 425 U.S. 141 (1975).

Of course, as provided by Section 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 this change 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, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the implementation of this reapportionment plan legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the West Baton Rouge Parish School Board plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,


Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



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14 MAR 1983

Mr. L. C. Lutz
Superintendent, West Baton
Rouge Parish School Board
670 Rosedale Street
Port Allen, Louisiana 70767

Dear Mr. Lutz:

This is in reference to your request that the Attorney General reconsider the November 8, 1982, objection under Section 5 of the Voting Rights Act of 1965, as amended, to the redistricting plan for the School Board in West Baton Rouge Parish, Louisiana. Your request was received on January 12, 1983.

Although you have requested that we reconsider the Section 5 objection, you have not provided us with any additional factual information to support your request. You have contended, however, "that the proposed overall plan satisfies the retrogression test enunciated in [Beer v. United States, 425 U.S. 130 (1976)]" and on that basis, you request that the objection be withdrawn.

In order to receive the Section 5 preclearance requested, the School Board must demonstrate that the reapportionment plan at issue is free of both discriminatory purpose and effect. 42 U.S.C. 1973c. The Beer retrogression standard is the method employed to determine whether the voting change at issue would "have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of §5." Beer v. United States, *supra*, 425 U.S. at 141. Simply demonstrating, however, that the reapportionment plan is ameliorative, or nonretrogressive, does not entitle the School Board to the Section 5 preclearance it seeks; the Board must also demonstrate the absence of a discriminatory purpose. City of Richmond v. United States, 422 U.S. 358, 378-379 (1975); Busbee v. Smith, 549 F. Supp. 494, 516 (D. D.C. 1982).

The November 8, 1982, Section 5 objection to the School Board's reapportionment plan was interposed because "we [were] unable to conclude that the board has shown the decision not to adopt a nine member single-member district plan to be free from impermissible racial considerations as required by Section 5." (November 8, 1982, objection letter, p. 2.) Thus the objection was interposed because of concerns regarding racial purpose, rather than retrogressive effect. Since you have supplied no additional factual information regarding the racial purpose issue, there is no basis for altering the decision which we reached on November 8, 1982. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

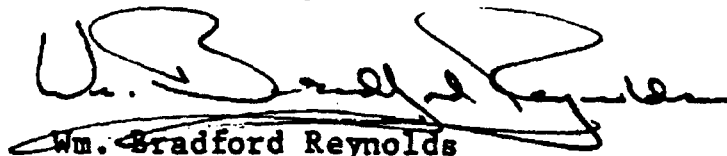
Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, irrespective of whether the change previously has been submitted to the Attorney General. As previously noted, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the redistricting plan unenforceable. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.9).

In addition, you requested "clarification on why a multi-member district is acceptable in one portion of the parish (proposed District 6) and not in another (the Port Allen area)." I can only reiterate that the objection was interposed because the Board failed to demonstrate the absence of racial purpose; and the information concerning racial purpose centered on the drawing of the multi-member district in the Port Allen area. While the use of multi-member districts is not discriminatory per se, the use of such districts for the purpose of diluting black voting strength violates Section 5 as well as the Constitution. Busbee v. Smith, supra, 549 F. Supp. at 516.

Finally, you requested clarification as to the impact registered voter data had on our decision to object. While registered voter data is considered along with all the other sources of information available to us, such data is not the determining factor in a final decision.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the West Baton Rouge Parish School Board plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds", written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division