



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 1, 1991

Angie Rogers LaPlace, Esq.
Assistant Attorney General
P.O. Box 94125
Baton Rouge, Louisiana 70804-9125

Dear Ms. LaPlace:

This refers to Act No. 651 (1991), which codifies the existing constitutional method of selection and provides the 1991 redistricting plan for the Board of Elementary and Secondary Education (BESE) in the State of Louisiana, 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 submission on August 2, 1991; supplemental information was received on August 9, 19, and 21, and September 6, 1991.

We have considered carefully the information you have provided, as well as Census data and comments and information from other interested parties. At the outset, we are compelled to observe that the state's initial submission contained virtually none of the information required and explicitly described in our published administrative guidelines for a submission of a redistricting voting change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.52 through 51.60). Subsequently, in response to our requests, the state provided the bare minimum of information in a piecemeal fashion. Nevertheless, we have expedited our review to the extent possible consistent with our responsibilities under Section 5, in view of the state's 1991 election schedule.

Our analysis demonstrates that the proposed redistricting plan for BESE appears to have no retrogressive effect within the meaning of Section 5. The plan maintains the existing district in which minority voters usually will be able to elect a board member of their choice. However, as you know, retrogressive effect is only one aspect of our inquiry under Section 5. See Busbee v. Smith, 549 F. Supp. 494, 516 (D.D.C. 1982).

As we have previously advised the state and as set forth in the legal rules and precedents established by the federal courts and our published administrative guidelines, we are also obligated to evaluate whether the submitting authority has carried its burden of establishing that its proposed redistricting plan is free of racially discriminatory purpose and whether the plan would cause a clear violation of Section 2 of the Act. See 28 C.F.R. 51.55(b)(2). For example, where voting patterns in a jurisdiction are regularly divided along racial lines, we cannot preclear those portions of a plan where the legislature has deferred to the interests of incumbents while refusing to accommodate the community of interest shared by insular minorities. See, e.g., 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). Such concerns are frequently related to the unnecessary fragmentation of minority communities into several districts so that they cannot expect to elect candidates of their choice. See 28 C.F.R. 51.59. We endeavor to evaluate these changes in the context of the 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.

Turning now to the instant submission, we note first that demographic changes in the state during the past decade have resulted in a small loss in total population, but nearly a two percent increase in the black proportion of the total population. Yet, we note that although the state is now about 31 percent black in total population, the proposed plan continues to provide for only a single majority black district out of the eight districts used for the elected BESE members.

Under the Section 5 guidelines, one relevant factor as to a redistricting effort is "[t]he extent to which available alternative plans satisfying the jurisdiction's legitimate interests were considered." 28 C.F.R. 51.59(e). We note that, during deliberations, the legislature considered and rejected proposed alternatives that would have provided for two majority black districts. Our independent analysis suggests that there are a number of possible configurations in which boundary lines are drawn as logically as in the proposed plan, but in which the black population concentrations are recognized in a manner that provides an additional opportunity for minority

voters. For example, it appears that the significant concentrations of black voters in northeastern Louisiana and in the parishes bordering the State of Mississippi, both along the river and the state's southern border, can be combined in a way that recognizes the black voting potential in those areas. Under the adopted plan, however, these concentrations are fragmented into three districts, submerging black voters in white majority districts in which the black proportion of the total population is no greater than 38 percent of the total population.

The information available to us suggests that the state relied on a "least-change" approach to the 1991 BESE redistricting effort and placed high importance on the criteria of compactness and communities of interest, with the latter defined primarily as "northern" and "southern" parishes. As to compactness, however, a comparison of the proposed plan with, for example, the alternative proposed in H.B. No. 1433 (1991), demonstrates that each plan provides for districts that are geographically diverse and extensive. Furthermore, our analysis establishes that black voters throughout the state are cohesive, in a way that transcends the distinction between northern and southern parishes. In addition, it appears that the role and responsibilities of BESE members are to address the needs of school systems throughout the state, without consideration of election district boundaries or whether schools are located in the north or south.

Such departures from neutral guidelines are sufficient to support a reasonable inference that "the departures are explainable," at least in part, "by a purpose to minimize the voting strength of a minority group." Connor v. Finch, 431 U.S. 407, 425 (1977). In addition, it appears that in the context of racially polarized voting in the state, the proposed plan does significantly minimize the ability of black voters to participate in the political process for BESE. See Chisom v. Roemer, 59 U.S.L.W. 4696, 4700 n.24 (U.S. June 20, 1991).

Furthermore, it seems that a primary motivation in configuring the proposed districts under a "least-change" scheme was to preserve existing districts as much as possible in order to satisfy or protect incumbents. As indicated above, while protecting incumbency is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See, e.g., Garza, 918 F.2d at 771. Where, as here, the protection afforded several incumbents is provided at the expense of black voters, the state bears a heavy burden of demonstrating that its choices are based on neutral nonracial considerations and are not tainted, even in part, by an invidious racial purpose.

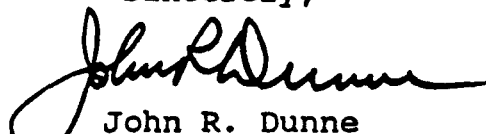
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Act No. 651 (1991) to the extent that the redistricting plan configures districts for the parishes in proposed Districts 5, 6, and 8.

With regard to the provisions of Act No. 651 (1991) that codify the existing constitutional method of selection for the Board of Elementary and Secondary Education, the information you have provided indicates that no substantive change in the method of selection has been adopted. Accordingly, the Attorney General does not interpose any objection to the statutory codification change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See 28 C.F.R. 51.41.

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 has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. 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, Act No. 651 (1991) continues to be legally unenforceable to the extent that it adopts a redistricting plan for the state Board of Elementary and Secondary Education. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, and in light of the impending BESE elections, please inform us of the action the state plans to take concerning this matter. If you have any questions, you should call Sandra S. Coleman (202) 307-3718, a Deputy Chief in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division