



U. S. Department of Justice

Civil Rights Division

Washington, D.C. 20530

October 3, 2011

Ms. Nancy P. Jensen
Garnet Innovations
1564 Ormandy Drive
Baton Rouge, Louisiana 70808

Dear Ms. Jensen:

This refers to the 2011 redistricting plan and the creation, realignment, and renumbering of voting precincts for East Feliciana Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your response to our August 1, 2011, request for additional information on August 2, 2011; additional information was received through August 29, 2011.

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 will have a discriminatory effect. *Georgia v. United States*, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. The voting change at issue must be measured against the benchmark practice to determine whether it would "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). As discussed further below, I cannot conclude that the parish's burden under Section 5 has been sustained with regard to the proposed 2011 redistricting plan. Therefore, on behalf of the Attorney General, I must object to the plan.

We have carefully considered the information you have provided, as well as other information such as census data, comments and information from other interested parties, and the parish's previous submissions. According to the 2010 Census, the parish has a total population of 20,267 persons, of whom 9,133 (45.1%) are African American. Of the 16,075 persons of voting age, 7,027 (43.7%) are African American.

We start our review of the plan's effect by determining the level of minority voting strength under the benchmark plan. Our analysis of elections conducted within the parish over the past decade indicates that black voters have the ability to elect candidates of choice in four benchmark districts: Districts 2, 3, 5, and 7. The proposed plan maintains that ability in three of these four benchmark districts. We reach a contrary conclusion with regard to District 5.

The census data indicate that between 2000 and 2010, the total black population in District 5 has remained relatively constant at approximately 53 percent, but that black persons have become a greater proportion of the registered voters, increasing from 43.9 percent in 2002 to 46.8 percent by September 2011. In the Town of Clinton, the municipality around which District 5 is based in both the benchmark and proposed plans, the percentage of registered voters who are black has increased from 49.8 to 54.5 percent since 2000.

Our election analysis establishes that racial bloc voting persists in both parish elections as well as in elections in District 5. In addition, the analysis reveals that there is a consistent level of crossover voting by white persons for black-preferred candidates. The statistical evidence of significant racial polarization is corroborated by the anecdotal evidence obtained from parish residents, including the police jurors, with whom we spoke.

The changes to District 5 in the proposed plan lower the percentage of black persons in the total population, the voting age population, and the number of registered voters in the district significantly. These decreases are such that, based on our analysis, black voters in the proposed district will no longer have the ability to elect a candidate of choice to office. Accordingly, based on the information that we have obtained and our analysis of that evidence, the parish has not carried its burden of showing that its proposed plan does not have a retrogressive effect upon the ability of black voters to elect their candidate of choice.

The determination that benchmark District 5 is an ability-to-elect district is buttressed by the same facts that lead to the conclusion that the parish cannot establish that the proposed plan was not adopted with a discriminatory purpose.

With respect to the city's ability to demonstrate that the plan was adopted without a prohibited purpose, the starting point of our analysis is *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). In *Arlington Heights*, the court provided a non-exhaustive list of factors that bear on the determination of discriminatory purpose, including, but not limited to, the disparate impact of the action on minority groups; the historical background of the action; the sequence of events leading up to the action or decision; the legislative or administrative history regarding the action; departures from normal procedures; and evidence that the decision-maker ignored factors it has otherwise considered important or controlling in similar decisions. *Id.* at 266-68.

The decision to add the Lakeshore area to District 5 decreased the black percentage of the proposed district's total population, voting age population, and registered voters by more than four percentage points each. Our election analysis indicates the closeness of interracial election contests in the district. This four point (or more) reduction in all of these relevant measures will virtually eliminate the ability of black voters to elect a candidate of choice.

According to the information provided by the parish, its demographer met separately with four white police jurors at the beginning of the redistricting process where they made the most important overall decision regarding the proposed plan, specifically to exclude, for the first time, the prison population from the population process. At that time, the parish also chose to unite

the entire Lakeshore area and move it into District 5. The Lakeshore area, which was split between Districts 1-A and 3 under the benchmark plan, has never been located in District 5 in the past.

There appears to be little, if any, dispute that combining the Lakeshore area into District 5 is tantamount to choosing to reduce its minority voting strength. As a separate community of interest, it is remarkably dissimilar from the Town of Clinton, in which 84.7 percent of District 5's voters live under the benchmark plan. For example, a majority of benchmark District 5's population is black, while the Lakeshore area has a total white population percentage of 79.6 and a white voting-age population of 85.5 percent. Additionally, electoral and census data indicate that residents in the Lakeshore area have a significantly greater level of political participation than those in Clinton.

The parish claims that both the reduction of the black population in District 5 and the addition of the Lakeshore area to it were necessary to prevent it from being under-populated under the proposed plan. Neither of these statements can withstand scrutiny. First, the proposed plan fails to comply with the Constitution's one person, one vote requirement by any measure. Only two of the nine districts fall within a deviation range of plus or minus five percent. Moreover, Districts 4-A and 7 have smaller population totals under the proposed plan than District 5 has under the benchmark plan. If benchmark District 5 was left unaltered in the proposed plan it would have only been the third-least populated district.

Even acknowledging the parish's legitimate interest in bringing District 5's population within constitutionally prescribed limits, the proposed plan did not accomplish that goal. Rather, by adding the entire Lakeshore area, District 5 is now the most over-populated district under the proposed plan, with a population deviation of 8.7 percent greater than the ideal district. The changes to District 5, in sum, did little, if anything to achieve the stated purpose of equalizing population deviations.

The parish could have added population to District 5 without adding the Lakeshore area. They could have either left the area unchanged from the benchmark plan, split between Districts 3 and 1-A or, if the parish wanted to consider the Lakeshore area as a community of interest, they could have moved the entire area into District 1-A. By doing so, the parish could have maintained the same level of minority strength in District 5 and created smaller population deviations both in that district and parish-wide. Benchmark District 5 is surrounded by a total of four districts and is not confined by any parish boundaries, so the district could have expanded in virtually any direction, so long as it did not result in an inappropriate population deviation or retrogression in another district. Additionally, the district expanded to the southwest in the proposed plan, around two majority-black precincts that would have mitigated some of the black population loss.

The only possible conclusion is that the parish's stated rationale for uniting the Lakeshore area in District 5 is pretextual. Accordingly, the parish has failed to identify any legitimate government interest that is served in making these changes to District 5. In the absence of such

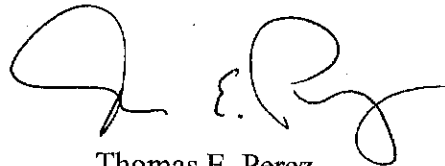
an explanation, the parish has failed to establish, as required under Section 5, that the proposed redistricting plan was adopted without a discriminatory purpose.

Taken separately, each of the parish's actions with regard to District 5 was unnecessary. Taken together, they constitute credible evidence that District 5's configuration in the proposed plan was driven by a belief that minority voters have the ability to elect a candidate of choice in the district under the benchmark, and that ability should be eliminated under the proposed plan. These facts preclude the parish from demonstrating that the proposed plan, particularly the newly-configured District 5, was not motivated by a purpose prohibited by Section 5.

Because the creation, realignment, and renumbering of voting precincts that were submitted with the plan are related to and dependent upon the objected-to redistricting plan, the Attorney General will make no determination regarding those changes. 28 C.F.R. 51.

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 neither has 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. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the United States District Court for the District of Columbia is obtained, the submitted change continues to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10. To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action East Feliciana Parish plans to take concerning this matter. If you have any questions, you should contact Ms. Kelli Reynolds (202-305-1046), an attorney in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. E. Perez', written in a cursive style.

Thomas E. Perez
Assistant Attorney General