JRD:JGH:JV:SJM:lmd:gmh:ll
DJ 166-012-3
92-1889

June 16, 1992

Honorable Robert A. Butterworth
Attorney General
Office of the Attorney General
The Capitol
Tallahassee, Florida 32399-1050

Dear Mr. Attorney General:

This refers to the 1992 House of Representatives redistricting plan and the 1992 Senate redistricting plan for the State of Florida, 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 April 17, 1992; supplemental information was received on April 22, May 4, June 3, June 9, and June 10, 1992.

We have carefully considered the information the state has provided, as well as Census data and information and comments from other interested persons. The preclearance requirement of Section 5 applies to only five counties in Florida: Collier, Hardee, Hendry, Hillsborough, and Monroe. Therefore, this review and determination regarding the submitted State Senate and House of Representatives redistrictings addresses the plans only insofar as they affect those five counties. As it applies to the redistricting process, the Voting Rights Act requires that the Attorney General determine whether the submitting authority has sustained its burden of showing that a proposed plan is free of the proscribed purpose and effect. In addition, a submitted plan may not be precleared if its implementation would result in a clear violation of Section 2 of the Act in the covered counties.

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 legislature has deferred to the interests of incumbents while refusing to accommodate the community of interests 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 (1992); 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. See 28 C.F.R. 51.59. We endeavor to evaluate these issues 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 ensures fair election opportunities and does not require that any jurisdiction attempt to guarantee racial or ethnic proportional representation.

Based upon that review, the Attorney General does not interpose any objection to the House of Representatives redistricting plan. 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 changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

We are unable to reach the same conclusion with regard to the Senate redistricting plan. With regard to the Hillsborough County area, the state has chosen to draw its senatorial districts such that there are no districts in which minority persons constitute a majority of the voting age population. To accomplish this result, the state chose to divide the politically cohesive minority populations in the Tampa and St. Petersburg areas. Alternative plans were presented to the legislature uniting the Tampa and St. Petersburg minority populations in order to provide minority voters an effective opportunity to elect their preferred candidate to the State Senate. Consequently, we have carefully obtained and evaluated the state's justifications for rejecting these proposals.

The state has claimed that minority voters under these alternative plans would not be able to elect a candidate of their choice in the Hillsborough area. The state further contends that even if minority voters in this area were able to elect their preferred candidate in this area, the projected influx of white population into such a district would thwart future opportunities

of minority voters to elect a candidate of their choice in such a district.

We find such claims to be unsupported by the information that is before us. First, the election data, provided by the state, indicate that minority voters would be able to elect their preferred candidate in a Tampa-St. Petersburg district under the alternative plans. Second, much of the projected influx of white population would be in an area in Pinellas County that lies outside the territory of any minority districts under the alternative plans. Nor do we find persuasive the state's suggestion that it would be inappropriate to join the minority populations in Tampa and St. Petersburg because those areas are separated by Tampa Bay, and because those areas do not share common particularized concerns. We note that the state's own proposed plan contains several districts which cross bodies of water, including proposed District 26 immediately to the south. Furthermore, the information before us, including the economic and other ties between Tampa and St. Petersburg, as well as the political cohesiveness of minority voters in those two cities, demonstrates that the two areas do share a commonality of interest. Finally, we have examined evidence, including evidence in the legislative record, which suggests that the state's approach to senatorial redistricting in the Hillsborough area was undertaken with an intent to protect incumbents. Such a rationale, of course, cannot justify the treatment of minority voters in this area by the State Senate plan. See, e.g. Garza v. County of Los Angeles, supra.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state has sustained its burden in this instance. Accordingly, on behalf of the Attorney General, I must object to the 1992 redistricting plan for the Florida State Senate to the extent that it incorporates the proposed configurations for the 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 1992 Senate redistricting plan 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 1992 redistricting plan for the Senate continues to be legally unenforceable in the counties covered by Section 5. Clark v. Roemer, 111 S.Ct. 2096 (1992); South Carolina v. United States, 585 F. Supp. 418 (D.D.C. 1984); 28 C.F.R. 51.10 and 51.45.

Finally, we understand that there are challenges under Section 2 of the Voting Rights Act presently being considered in the consolidated cases of De Grandy v. Wetherall, No. 92-40015-WS and Florida State Conference of NAACP Branches v. Chiles, No. 92-40131-WS (N.D. Fla.). In addition, some of the comments we received alluded to various concerns involving the adequacy of the plans in non-covered counties. Because our review of these plans is limited by law to the direct impact on geographic areas covered by Section 5, we did not undertake to assess the lawfulness of the legislative choices outside of Collier, Hardee, Hendry, Hillsborough and Monroe counties. We do note, however, that allegations have been raised regarding dilution of minority voting strength in an effort to protect Anglo incumbents in non-covered jurisdictions, for example, in the Pensacola-Escambia County area and the Dade County area. Because these and other legislative choices did not directly impact upon the five covered counties, they cannot be the basis of withholding preclearance of either plan. Consequently, nothing in this letter should be construed as a determination by the Attorney General regarding the non-covered jurisdictions. We are providing a copy of this letter to the court and counsel of record in the referenced cases where those issues, and others, are being litigated.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Florida plans to take concerning this matter. If you have any questions, you should call J. Gerald Hebert (202-307-6292), Special Counsel for Litigation in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: The Honorable Joseph W. Hatchett
The Honorable William H. Stafford, Jr.
The Honorable C. Roger Vinson
Counsel of Record