U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

JAN 21 1992

Mark H. Cohen, Esq.
Senior Assistant Attorney General
Department of Law
132 State Judicial Building
Atlanta, Georgia 30334

Dear Mr. Cohen:

This refers to Act No. EX29 of the 1991 Extraordinary Session, which provides for the 1991 redistricting of House districts and a change in method of election from 130 single-member districts, 24 multimember districts and two floterial districts to 180 single-member districts; Act No. EX28 of the 1991 Extraordinary Session, which provides for the 1991 redistricting of the 56 Senate districts; and Act No. EX27 of the 1991 Extraordinary Session, which provides for the implementation of an increase from ten to 11 Congressional seats for the State of Georgia and the 1991 redistricting of the 11 Congressional districts, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Additional information necessary to complete our review of all three Acts was requested on November 22, 1991; responses were received on November 29 and December 10 and 18, 1991.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. With regard to the change in the method of electing the House members from 130 single-member districts, 24 multimember districts and two floterial districts to 180 single-member districts, the Attorney General does not interpose any objection. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the statewide redistricting plans, 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 the legislative choices made under a proposed plan are 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 statewide redistricting of the State of Georgia, 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 the legislative choices that were made in arriving at the 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 in which the state 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. 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 or fragmenting minority concentrations which have a community of interest. 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 legislative choices made by the State of Georgia with regard to all three statewide plans in light of these principles. At the outset, we note that elections in the State of Georgia are characterized by a pattern of racially polarized voting which appears to be exacerbated by the requirement that state legislative and congressional positions be elected by a majority of the vote. In addition, a concern has been raised that throughout the legislative process, certain rules and procedures were adopted which discouraged alternative redistricting plans from being presented and debated. In fact, it was charged that the state often rushed the process in order to manipulate the adoption of plans that minimize minority voting strength overall.

The House Plan

With respect to the House plan, it appears that in several areas discussed below, boundary lines logically could be drawn so as to recognize black population concentrations in a manner that would provide black voters more effectively with an opportunity to participate in the political process and to elect candidates of their choice. Another factor which appears to impact adversely on minority voting strength was the state's treatment of black concentrations to protect incumbents. Thus, the state's "work group" system and rules for the members of the House worked to benefit incumbents and minimize black voting strength.

In the southwest region involving proposed House District 159, and in the Peach and Houston Counties area, the proposed plan fails to recognize black population concentrations although reasonable alternative configurations of boundary lines would permit additional districts that would provide black voters the opportunity to elect candidates of their choice. While we have noted the state's assertion that the division of the black community in these areas into several districts enhances black voting strength by providing black voters an opportunity to influence elections in additional districts, it appears that the plan in fact was designed to ensure the re-election of white incumbents.

In House District 178 and in the Clayton County area, involving proposed House District 93, the proposed House plan appears to manipulate the configurations to limit the racial percentages and to protect the incumbents in these areas. Furthermore, alternative plans were available that provide for effective black majority districts and the state again fails to provide a nondiscriminatory reason for rejection of such alternatives.

In Chatham County and in the Glynn/McIntosh/Liberty Counties area, alternatives which avoided unnecessary retrogression and which recognized minority voting potential by drawing additional viable black majority districts were rejected in what appears to be an effort to accomodate incumbent legislators at the expense of black voters. Similarly, in drawing the proposed districts, the state fragmented the politically cohesive and active Burke County voters into three different House districts.

In the Muscogee region, in following the arbitrary and discriminatory work group lines in drawing five districts internally within Muscogee County, the state avoided serious consideration of alternative plans which create a third district in the Muscogee and Chattahoochee Counties area which would provide black voters with an equal opportunity to participate in the political process and elect a candidate of their choice to office.

Despite a significant population decline that would normally require a reduction from four House districts to three House districts in Dougherty County, the state stretches unnecessarily to retain four House districts based in this county. To accomplish this, the state projects a slender finger of predominately white District 164, which is comprised of all of Mitchell and part of Colquitt Counties, up into Dougherty County to include a small number of Dougherty County residents. Concerns were raised that the state's choices of boundary lines in this area were a response to requests that lines be drawn to avoid control by black voters' representatives by contriving to maintain an equal number of white and black legislators on the Dougherty County legislative delegation. The state has not proffered a nonracial justification for this unusual configuration other than to say that this "finger" was drawn primarily due to specific requests.

The Senate Plan

The Senate plan likewise includes instances in which the concerns of the incumbents were placed ahead of black voting potential. In the DeKalb/Clayton Counties area (proposed District 44), the Twiggs/Wilkinson Counties area (proposed District 26), and the Fulton/Cobb Counties area (proposed Districts 33 and 38) it appears that protection of incumbents motivated the fragmentation of concentrations of black residents who clearly have a community of interest with the residents of the adjacent black majority district.

In the southwest portion of the state, as well as east-central Georgia, there are many majority black counties which have been divided between several majority white districts or drawn into a district such as proposed District 12 in which the black percentage of voters was minimized to protect the white

incumbent. We note that there were available to the state alternatives which recognized the black voting potential in these areas by drawing three majority black districts in the southwest (in the area of proposed Districts 8, 11, 12, 14, and 15) and a second majority black district in the east-central portion of the state (in the area of proposed Districts 4, 20, 22, 24, and 25).

We understand also that, late in the redistricting process, proposed Senate District 2 was altered by including several predominantly white, affluent, politically active precincts while excluding adjacent black concentrations. The state has not, to date, made a persuasive showing that these particular boundary choices are free of a discriminatory purpose and effect.

The Congressional Plan

With regard to the Congressional redistricting plan, we note that Georgia has gained one additional Congressional seat because of an increase in the state's population. A concern was raised with regard to the principle underlying the Congressional redistricting, namely that the Georgia legislative leadership was predisposed to limit black voting potential to two black majority districts. The proposed plan provides for districts which attempt to recognize, for the most part, black voting potential in the Fulton/DeKalb area and the east-central portions of the state but do not recognize the black voting potential of the large concentration of minorities in southwest Georgia. While Section 5 considerations certainly do not dictate that the state adopt any particular configuration, we note that several alternative redistricting approaches were suggested to the legislature during the process. Notwithstanding these alternatives, the state redistricting leadership did not make a good faith attempt to recognize the concentrations of black voters in the southwest and has not yet been able to adequately explain the departure from its own stated criteria and what appears to be resulting minimization.

As to the proposed 11th Congressional district, we note that the exclusion of the minorities in adjacent Baldwin County from this majority black district not only limits the black percentage of the district but also ignores the community of interest which black residents of Baldwin County share with those in the surrounding counties. The state has indicated that this configuration resulted due to the extensive health care complex in Baldwin County. This reason, however, appears to be pretextual.

Similarly, with regard to the proposed 5th Congressional district, the state has not satisfactorily explained the reasons for including large portions of predominantly white precincts in Fayette County while excluding adjacent black concentrations (e.g., in Cobb County) which have a community of interest with the residents of the 5th district. This is of particular concern considering the retrogessive impact these proposed boundary lines have on black voters' opportunity for representation on the Department of Transportation board.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance with respect to the three proposed plans under review. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plans for Georgia State House, Senate and Congressional districts to the extent that each incorporates the proposed configurations for the areas 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 House, Senate and Congressional redistricting plans have 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 objections. However, until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the 1991 redistricting plans for Georgia House, Senate and Congressional districts continue 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.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Georgia plans to take concerning these matters. If you have any questions, you should call Sandra Coleman (202-307-3718), Deputy Chief of the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division