U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

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340 Jesse Jewell Parkway
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Dear Messrs. Jernigan, Hartley & Kirby:

This refers to Act No. 435 (2002), which provides the redistricting plan for the Marion County School District in Marion County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our July 1, 2002, request for additional information on August 16, 2002; supplemental information was received through October 1, 2002.

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the school district's previous submissions. As discussed further below, I cannot conclude that the school district's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the school district's 2002 redistricting plan.

The school district is governed by a five-member board. Voters elect five school board members to four-year, staggered terms from single-member districts. This method of electing the board of education was adopted in 1986 and received Section 5 preclearance that year. The districting plan adopted at that time serves as the benchmark to evaluate whether the 2002 plan withstands scrutiny under Section 5.

According to the 2000 Census, the Marion County School District, coterminous with Marion County, Georgia, has a total

population of 7,144, of whom 2,425 (33.9%) are black persons. The voting age population is 5,119, of whom 1,617 (31.6%) are black persons. As of September 9, 2002, there were 3,863 active registered voters, of whom 1,302 (33.7%) were black. The 2000 Census indicates that there are three districts under the benchmark plan, Districts 1, 4, and 5, in which black persons are a majority of the voting age population: District 1 has a black voting age population of 60.1 percent, District 4 has a black voting age population of 57.7 percent, and District 5 has a black voting age population of 55.1 percent. During the past decade, black voters have demonstrated the ability to elect candidates of choice in Districts 1 and 4.

In contrast, the proposed 2002 redistricting plan contains only two districts in which black persons are a majority of the voting age population. District 1 retains a significant black population percentage, District 4 drops to a bare black majority of both the total (52.1%) and the voting age (50.7%) populations, and District 5 is no longer a majority black district as the black voting age population percentage decreases to 36.0 percent.

Our statistical analysis implies that elections in Marion County are marked by a pattern of racially polarized voting, in which white and black voters do not usually provide significant support to candidates supported by the other community. Within the context of such electoral behavior, the significant reduction in black voting strength in District 4 would necessarily entail a material reduction in the ability of black voters to elect candidates of choice under the proposed plan.

We recognize that the benchmark plan is severely malapportioned, with Districts 1, 4, and 5 being the most underpopulated, and that the black population percentage, on a county-wide basis, has dropped seven points. Accordingly, our analysis establishes that it is not possible to remedy the existing malapportionment and still retain three black population majority districts. While the loss of a third district that is majority black in population appears to be unavoidable, the loss of a second district in which the black voters can elect candidates of choice is not.

Although the plan drops the number of viable minority districts by one, the school board contends that this was necessary as a result of the confluence of the malapportionment and the drop in the county's black population from 1990, which made the result inevitable. If a retrogressive redistricting plan is submitted, the jurisdiction seeking preclearance of such a plan bears the burden of demonstrating that a less-

retrogressive plan cannot reasonably be drawn. Supplemental Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5411 (Jan. 18, 2001). Where the jurisdiction asserts that a non-retrogressive plan is not possible in light of one-person, one vote guarantees or other constitutional limitations, we look to see if an non-retrogressive alternative is feasible and, in certain instances, may develop illustrative plans as part of our analysis. Id. at 5413.

Here, our analysis, which included the preparation of such an illustrative plan, establishes that the significant reduction in the black voting age population percentage in District 4, and the likely resulting retrogressive effect on the ability of black voters to elect a candidate of choice to two seats on the board, was neither inevitable nor required by any constitutional or legal imperative. Illustrative plans demonstrate that it is possible to maintain the black voting age population in District 1 without causing a retrogressive effect and still meet the school district's stated redistricting criteria.

The ability to devise a plan that does not eliminate a second district in which black voters can continue to elect candidates of their choice and also complies with traditional redistricting principles establishes that the reductions in black voting strength resulting from implementation of the proposed plan were not unavoidable. Accordingly, the school district has failed to meet its burden of demonstrating that the proposed plan does not have a retrogressive effect.

Under Section 5 of the Voting Rights Act, a jurisdiction seeking to implement proposed changes affecting voting, such as a redistricting plan, must establish that, in comparison with the status quo, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." See Beer v. United States, 425 U.S. 130, 141 (1976). If the proposed plan materially reduces the ability of minority voters to elect candidates of their choice to a level less than what they enjoyed under the benchmark plan, preclearance must be denied. State of Georgia v. Ashcroft, 195 F. Supp. 2d 25, 77 (D.D.C. 2002).

In light of the considerations discussed above, I cannot conclude that your burden of showing that the submitted change does not have a discriminatory effect has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan. 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 changes have 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. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

If you have questions on these matters, you should call Ms. Maureen Riordan (202-353-2087), an attorney in the Voting Section. Refer to file No. 2002-2643 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General