U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

JUN 28 1991

Honorable Samuel B. Nunez
President of the Senate
Honorable Dennis Bagneris, Chairman
Committee on Senate and Governmental Affairs
Senate of the State of Louisiana
P. O. Box 94183
Baton Rouge, Louisiana 70804

Dear Senators Nunez and Bagneris:

This refers to Act No. 2 (2d E.S. 1991), which provides the 1991 redistricting plan and an implementation schedule and procedures for filling vacancies therefor for the Senate of 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 initial submission on May 7, 1991; supplemental information was received May 29 and 30, 1991.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. At the outset, we note that demographic changes in the state during the past decade have resulted in a small gain in total population and approximately a one percent increase in the black proportion of the total population, which, under 1990 data, is 30.8 percent. Yet, it appears that black population concentrations in some areas have increased at higher rates, a factor that we have evaluated in our review of the proposed redistricting plan. In addition, we have examined the 1991 Senate redistricting choices in light of a pattern of racially polarized voting that appears to characterize elections at all levels in the state.

With this background in mind, our analysis shows that, in large part, the Louisiana Senate redistricting plan meets Section 5 preclearance requirements. However, in two areas of the state, the proposed configuration of district boundary lines would appear to minimize black voting strength, given the particular demography of the black population: the Northeast area, particularly Ouachita Parish, and the Lafayette area, including St. Martin Parish.

Under Section 5, one factor relevant to the determination we must make with regard to a redistricting effort is "[t]he extent to which available alternative plans satisfying the jurisdiction's legitimate interests were considered." See 28

C.F.R. 51.59(e). As to both of the areas in question, alternative plans were presented that would have included a district that is majority-black both in total population and registered voters. While many discrete facts in the two areas differ, it appears that in each instance the proposed boundary lines divide black population concentrations in a manner that neutralizes black voting potential when adherence to neutral nonracial criteria would permit the creation of a district in which black voters would be afforded the opportunity to realize their potential. Furthermore, it seems that in devising the proposed districts the Senate inconsistently applied neutral criteria in a manner calculated to assure that white incumbents would be placed in white-majority districts.

For example, under Act No. 2, one of the districts in the Northeast, District 33, is 52.2 percent black in total population, but 46.5 percent black in voting-age population and 46.3 percent black in voter registration. Several alternatives for creating a district with a black majority in registered voters were presented--alternatives that would have avoided the proposed division of black population concentrations in the City of Monroe and Ouachita Parish. It appears that at least some of the alternative redistricting plans for that area, either as presented or with slight modifications, would have satisfied stated governmental interests, and no legitimate nonracial reason has been advanced for rejecting all of those alternatives. Indeed, the record before us indicates that the effect on white incumbents was the primary, if not exclusive, reason for adopting a configuration that unnecessarily divides black population concentrations in Ouachita Parish.

Similarly, regarding redistricting alternatives for the Lafayette area, one alternative,S.B. No. 5, included a district that has both a black majority of total population and of registered voters, a result that was achieved by combining cohesive black population concentrations of Lafayette, St. Landry, and St. Martin Parishes. The proposed plan, in comparison, divides those groups of black voters, and the information available to us suggests that this decision was intended, at least in part, to suppress the black proportion to a level considered acceptable to a white incumbent.

While protecting incumbency is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. 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). Where, as here, the protection afforded several white 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.

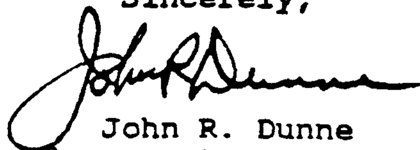
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). While our analysis indicates that the proposed plan will not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise" and, thus, will not have the proscribed discriminatory effect, see Beer v. United States, 425 U.S. 130, 141 (1976), 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 with regard to purpose. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plan for the State Senate to the extent that it incorporates the proposed configurations for the two 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 Senate redistricting plan 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, the 1991 Senate redistricting plan continues to be legally unenforceable. 28 C.F.R. 51.10 and 51.45.

The remaining changes proposed under Act No. 2 (2d E.S. 1991) are directly related to the proposed 1991 Senate redistricting plan. Therefore, the Attorney General will make no determination at this time with regard to the proposed implementation schedule and vacancy procedures. See 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Louisiana plans to take concerning these matters. If you have any questions, you should call Lora L. Tredway (202-307-2290), Attorney in the Voting Section.

Sincerely,



John R. Dunne
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Civil Rights Division