U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

August 12, 1996

E. Kay Kirkpatrick, Esq.
Director, Civil Division
Department of Justice
State of Louisiana
Baton Rouge, Louisiana 70804-9005

Dear Ms. Kirkpatrick:

This refers to Act No. 96 (1st Ex. Sess. 1996), which provides for a redistricting plan for electing the seven members of the United States House of Representatives from the State of Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on June 11, 1996; supplemental information was received on June 24, and August 2 and 7, 1996.

We have considered carefully the information you have provided, as well as information received from other interested persons, and the information available from the Hays v. Louisiana (W.D. La.) litigation. According to the 1990 Census, the State of Louisiana has a total population of 4,219,973 persons, of whom 1,291,470 persons (30.6 percent) are black. There are 2,992,704 persons of voting age, of whom 833,938 persons (27.9 percent) are black. Act No. 96 contains one majority-minority congressional district, located in the New Orleans area; none of the other congressional districts has a total black population greater than 32.5 percent.

As you know, based on the history and the current circumstances of voting in Louisiana, we have contended throughout the Hays litigation that a congressional redistricting plan for the State of Louisiana which creates only one majority-minority congressional district, such as Act No. 96, constitutes a violation of Section 2 of the Voting Rights Act. We have stated that, in Louisiana, "[t]he Gingles preconditions were established and the totality of the circumstances shows that a plan with only one majority-black district would have resulted in denying black voters an equal opportunity to participate in the political process and to elect representatives of their choice." United States J.S. at 17 n.2.

The State of Louisiana itself has admitted the predicate facts for this conclusion. In its jurisdictional statement to the Supreme Court, the State acknowledged that "a vestige of the state's past discriminatory practices is racial bloc voting, whereby minorities are denied an opportunity to elect candidates of their choice except in majority-minority districts."

Louisiana J.S. at 20. Moreover, the State recognized that a second majority-minority congressional district could be created that "conforms to the state's customary districting practices, and is therefore reasonably compact under Louisiana's traditional standards of compactness." Id. at 23. Indeed, the State concluded that "[i]n applying the Gingles factors to Louisiana's congressional redistricting, the record firmly establishes that the legislature correctly concluded that the state could reasonably be subject to a Section 2 claim unless a second majority-minority district was created." Id. at 18.

An analysis of the recent gubernatorial run-off election held in 1995, reinforces such a conclusion: as in other interracial contests, black voters overwhelmingly supported the black candidate and white cross-over was minimal. In light of the pattern of racially polarized voting that appears to prevail in elections in the State, Act No. 96 would appear to provide no realistic opportunity for black voters to elect a candidate of their choice outside of the New Orleans area. The Hays court itself recognized that "racial bloc voting is a fact of contemporary Louisiana politics." Hays v. Louisiana, slip op. at 4 n.17 (W.D. LA, January 5, 1996).

We note that a number of alternative plans exist, including several proposed during the Louisiana Legislature's consideration of congressional redistricting since 1991, that would have created two reasonably compact congressional districts in which black voters had a reasonable opportunity to elect candidates of choice. While we take no position on which of the plans before the Legislature was the State's most appropriate alternative choice, the existence of these plans -- some of which directly respond to criticisms raised by the federal court in Hays to the previous plan -- illustrate that viable alternatives consistent with current Supreme Court precedent were available but were inexplicably rejected or not considered.

In addition, the process by which the Legislature adopted Act No. 96 departed sharply from Louisiana's usual legislative procedures. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977). The Governor's formal call for the special session limited the Legislature's consideration of a congressional redistricting plan to "adopting in its entirety and without change" the redistricting plan imposed by the district court in the Hays litigation. During the special legislative session, on April 16, 1996, members of the Senate mounted a filibuster in an apparent attempt to defeat Act No. 96 (at that time HB 49), but parliamentary rules were invoked to end the filibuster, thereby cutting off debate and limiting the Senate's debate of HB 49 in the remainder of the special session. According to news reports, this may have been the only filibuster in "modern times" that has been killed in the Senate. Even the authority to consider alternative plans was questionable in light of the Governor's limited call of a special session.

Of course, we recognize that Act No. 96 is the same plan ordered by the District Court in Hays for use in this year's election. But, because of the State's adoption of Act No. 96, and the Supreme Court's subsequent dismissal of the appeals resulting from the Hays litigation as moot, there has been no opportunity to obtain appellate review on the merits of our Section 2 contentions. As set forth above, we have a situation where both the State and the federal court have acknowledged that electoral politics in Louisiana remain polarized by race; where black candidates continue in the main to be the choice of black voters and white candidates of white voters with limited cross-over; where a second district can be created in a way that respects Louisiana's districting traditions and provides black citizens a reasonable opportunity to elect candidates of choice; and a redistricting plan (Act No. 96) which fails to respond to any of these admitted realities. Based on the information presently available to us, we see no reason to alter the position which we have taken from the outset of our involvement in Hays.

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). In addition, a submitted change may not be precleared if its implementation would lead to a clear violation of amended Section 2 of the Voting Rights Act. See 28 C.F.R. 51.55. In light of the considerations discussed above, the implementation of Act No. 96 would clearly violate Section 2. I cannot conclude, as I must under the Voting Rights Act, that Section 5 preclearance is warranted. Therefore, on behalf of the Attorney General, I must object to Act No. 96 (1st Ex. Sess. 1996) to the extent that the proposed redistricting plan fails to create a second congressional district in Louisiana in which black voters have a reasonable opportunity to elect candidates of choice.

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 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. 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, Act No. 96 (1st Ex. Sess. 1996) continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (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 plans to take concerning this matter. If you have any questions, you should call Elizabeth Johnson (202) 514-6018, the Acting Chief of the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division