U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

April 25, 2005

Mr. David A. Creed
Executive Director
North Delta Regional Planning
and Development District
1913 Stubbs Avenue
Monroe, Louisiana 71201

Dear Mr. Creed:

This refers to the 2003 redistricting plan for the Town of Delhi in Richland Parish, Louisiana, 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 December 15, 2003, request for additional information on February 22, 2005.

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 town's previous submissions. Under Section 5 of the Voting Rights Act, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race. *Georgia v. Ashcroft*, 539 U.S. 461 (2003); *Procedures for the Administration of Section 5 of the Voting Rights Act*, 28 C.F.R. 51.52 (c). As discussed further below, I cannot conclude that the town's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2003 redistricting plan for the Town of Delhi.

According to the 2000 Census, the town has 2,247 persons of voting age, of whom 1,153 (51.3%) are black. The black population percentage within the town has steadily increased since 1970. As of April 2005, the total number of registered voters in the town was 2,202, of whom 57% are black.

Under the benchmark plan, black persons constitute a majority of the registered voters in four of the town's five wards, supporting the conclusion that minority voters have the ability to elect their candidates of choice in each district. Wards A and C have exceedingly high black voting age populations of 89.3% and 80.2%, respectively, and without question, will continue to provide black voters with the ability to elect their candidates of choice since the proposed plan

only slightly changes those percentages to 90.7% for Ward A and 81.8% for Ward C. Wards B and D reflect the increase in the black population that has occurred since the 1990 Census. Currently, 53.9% of Ward B's registered voters are black. The same transformation is evident in Ward D, which now has a black voter registration level of 60.9% and the proposed plan makes only a slight change in Ward D, reducing the black voting age population by only 2.6 percentage points.

Our analysis of electoral behavior in the town's elections indicates that voting is polarized along racial lines. The implementation of the proposed plan within the context of that racially polarized voting will eliminate one of the four wards in which black voters currently have the ability to elect candidates of choice. It appears that the only reason that black voters have not already elected their candidate of choice in that fourth ward is that, save for a single special election in 2001 in one ward, the city has not held a municipal election in seven years. When that election was held in 1998, the voter registration levels in Wards B and D indicated black persons had almost, but not quite, reached a majority status in those wards. They now have. Implementing the proposed plan will eliminate that ability in Ward B because it decreases the black voting age population by 10.5 percentage points to only 37.9%.

We also note that the elimination of one of the four wards in which minorities, based on their voter registration levels, have the ability to exercise the franchise effectively under the benchmark plan, was not necessary. The town rejected a less-retrogressive alternative, Plan 5, which was presented to it during its initial redistricting considerations three years ago. Moreover, utilizing the most current data, we have utilized the town's own redistricting criteria to devise an illustrative plan with four districts that have black voter registration majorities. Without question, black voters in the Town of Delhi are worse off under the proposed plan than they were under the benchmark plan.

A voting change has a discriminatory effect if it will lead to a retrogression in the position of members of a racial or language minority group (*i.e.,* will make members of such a group worse off than they had been before the change with respect to their effective exercise of the electoral franchise). *Reno v. Bossier Parish School Board*, 528 U.S. 320, 340, 328 (2000); *Beer v. United States*, 425 U.S. 130, 140-42 (1976). The town has failed to establish that the implementation of the proposed plan will not make minority voters worse off than they were under the benchmark plan.

In addition, our analysis indicates that the evidence precludes a determination that the proposed plan was not adopted, at least in part, to effectuate a retrogression in the ability of black voters in the Town of Delhi to elect candidates of choice.

The starting point of our analysis concerning whether the plan was motivated by an intent to retrogress is *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). There, the Supreme Court identified the analytical structure for determining whether racially discriminatory intent exists because direct evidence of such purpose or intent seldom exists in discrimination cases. This approach requires an inquiry into: (1) the impact of the decision; (2) the historical background of the decision, particularly if it reveals a series of

decisions undertaken with discriminatory intent; (3) the sequence of events leading up to the decision; (4) whether the challenged decision departs, either procedurally or substantively, from the normal practice; and (5) contemporaneous statements and viewpoints held by the decision-makers. *Id.* at 266-68. Applying these factors, the totality of the circumstantial evidence suggests the town intentionally sought the result we anticipate from the proposed plan.

Looking to the historical background of the city's decision, it is undisputed that Delhi's black population has consistently and significantly increased over the past three decades, and the increase is expected to continue. There are now four wards under the benchmark plan in which black persons are a majority of the registered voters, yet the town persists in its efforts to maintain a plan with only three such districts.

The drop in black voting strength in Ward B was not driven by any constitutional or statistical necessity. The town has made no claim that the reduction of the black population in this wards was necessary, nor has the town offered any justification for its actions, other than to say that the plan is legal because it is within the constitutional standard for population deviation and was adopted by a majority of the board. The board rejected a less-retrogressive alternative plan that complied with traditional redistricting principles and applicable law and that retained minority voting strength closer to benchmark levels. Further, as noted above, we were able to devise an illustrative plan that evidenced no retrogression, maintaining four wards in which black voters could elect a candidate of choice. Thus, the retrogression that results from the plan was avoidable, either by the adoption of Plan 5, a less-retrogressive alternative rejected by the board three years ago, or by a current plan that results in no retrogression whatsoever.

Moreover, the demographer hired by the town to prepare and submit its redistricting plan has told the board that the proposed plan does not best satisfy the redistricting criteria and retrogresses minority voting strength. Nevertheless, the town has twice adopted plans that are contrary to that guidance. In sum, the evidence precludes a determination that, under these circumstances, the proposed plan was not adopted, at least in part, with an intent to retrogress the ability of black voters to elect candidates of choice.

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. *Georgia v. United States*, 411 U.S. 526 (1973); 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the town's 2003 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 change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted change continues to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of Delhi plans to take concerning this matter. If you have any questions, you should call Mr. Robert Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

R. Alexander Acosta
Assistant Attorney General