U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Michael Bowers
Attorney General
132 State Judicial Building
Atlanta, Georgia 30334

11 FEB 1982

Dear Mr. Attorney General:

This is in reference to the Congressional reapportionment provided for in Act No. 5 (1981), submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on January 22, 1982. In accordance with your request we have expedited our consideration of this matter.

We have given careful consideration to the information that you have supplied, along with relevant Census data and comments and information provided by other interested persons. Our analysis shows that, for the most part, the plan meets the requirements of Section 5. There continue to be concerns, however, regarding contentions which have been made to us regarding the proposed congressional districts in Fulton and DeKalb Counties as they affect the Atlanta metropolitan area.

At the outset, we note that proposed district 5 is 57.3% black in total population and that that figure represents a seven percentage point increase in black population from existing district 5, the one district which appears to offer the minority community some opportunity to elect a candidate of its choice. Thus, under Beer v. United States, 425 U.S. 130 (1976), the plan must be considered one which "enhances the position of minorities in respect to their effective exercise of the election franchise" and therefore cannot be said to have a racial "effect" within the meaning of Section 5.

However, Beer teaches also that "[i]t is possible that a legislative reapportionment could be a substantial improvement over its predecessor in terms of lessening racial discrimination, and nonetheless continue so to discriminate on the basis of race or color as to be unconstitutional." Beer v. United States, supra, 425 U.S. at 142, n. 14.

In respect to the latter teaching, the proposed plan divides an apparently cohesive black community of Fulton and DeKalb Counties between districts 5 and 4. The Georgia Senate proposed to assign this black community, which has grown significantly in the past decade, to one congressional district and the resulting district 5 proposed by the Senate was projected to be 69% black in total population. In regard to this circumstance, our letter of November 27, 1981, requested the state to provide any available information to rebute contentions that this described minority community was divided in the submitted plan in order to dilute minority voting strength and to minimize the chances of that community's electing a candidate of its choice to Congress.

The state's response essentially was that the minority community in this two county area is not "cohesive". However, other information indicates that the black residents of this area do share common interests, even though their economic status may vary. Our information also demonstrates a wide variation in economic status among the areas which were included in proposed district 5.

We also have been advised that the Senate's plan for the Atlanta area was rejected in order to preserve, to the extent possible, separate districts for Fulton and DeKalb Counties. The information we have, however, is conflicting. For example, the plan before us assigns to district 4 a substantial area of northern Fulton County, which area previously had been in district 5; and county lines in the Atlanta metropolitan area are crossed in other places. Thus, on the basis of information currently in hand, we are unable to conclude that an effort to preserve county lines necessitated the fragmentation of the black community. Also relevant

to our review is your statement that the portion of the black community which was included in proposed district 5 is "less politically active", which may explain the fact that even though district 5 has been increased in black percentage the district "has a 54% white voter registration."

As you know, under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also, Procedures for the Administration of Section 5, 28 C.F.R. 51.39(e) (46 Fed. Reg. 878). In this case, we have not been presented with information sufficient to enable us to reject the claims that the line between districts 4 and 5 was drawn to minimize the voting strength in that area. Under these circumstances, and in view of the fact that you have requested a decision at this time, I am unable to conclude that the State has satisfied the burden of proof required by Section 5. Thus, I am required to interpose a Section 5 objection, on behalf of the Attorney General, to the submitted plan. However, if additional information is available regarding this issue, we would be willing to reconsider this objection pursuant to the applicable provisions of the Procedures for the Administration of Section 5. See 28 C.F.R. 51.44.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these 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. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of this objection is to render the congressional redistricting as authorized by Act No. 5 (1981) legally unenforceable.

If you have any questions concerning this letter, please feel free to call Carl Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

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DJ 166-012-3

11 FEB 1982

Honorable Michael Bowers
Attorney General
132 State Judicial Building
Atlanta, Georgia 30334

Dear Mr. Attorney General:

This is in reference to the reapportionment of the Georgia House and Senate provided for in Act No. 3 (1981) and Act No. 4 (1981) submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. 42 U.S.C. 1973c. Your submission was completed on January 22, 1982. In accordance with your request we have expedited our consideration of this matter.

We have given careful consideration to the information that you have supplied. In addition, we have examined relevant Census data and comments and information provided by other interested persons. On the basis of our review we have determined that, for the most part, both plans would appear to meet the requirements of Section 5 of the Voting Rights Act. However, there do remain several areas of concern.

As you know, under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also, Procedures for the Administration of Section 5, 28 C.F.R. 51.39(e) (46 Fed. Reg. 878). By our letter of November 27, 1981, we pointed out some of the concerns that had been raised by our analysis and requested information from you to aid us in resolving those and other concerns which precluded us at that time

from concluding that the proposed plans did not have the purpose and effect of denying or abridging the right to vote on account of race. Your responses of December 22, 1981 and January 18, 1982 permitted us to resolve a number of those concerns and led us to conclude that in most respects the state has satisfied the required burden of proof with respect to each plan. Questions remain, however, regarding the manner in which districts are drawn in a few areas of the state, as more fully described below.

Regarding the Senate plan, our concerns center on the districts in DeKalb County and Richmond County. In DeKalb County the existing plan provides a district (district 43) with a 69% black population; our information also indicates that approximately 57% of the registered voters in that district are black. The proposed plan substantially revises boundaries of the districts in this area with the result that new district 43 is projected to be 45% black in total population. While neighboring district 42 is projected to be 65% black in total population our information indicates that only 42% of the registered voters in that district would be black.

It has been claimed that the districts were drawn in this manner in order to dilute minority voting strength and to prevent the black community from electing a candidate of its choice to office. While the information before us regarding the purpose behind the manner in which the districts were drawn is conflicting, the information, as a whole, does demonstrate that the proposed plan will have the effect of making it more difficult for the minority community of DeKalb County to elect a candidate of its choice to the state Senate.

In Richmond County the proposed plan would decrease the black population percentage in district 22 from approximately 50% black to 48% black. In devising this district the state appears to have rejected the plan proposed by the Chairman of the Senate Reapportionment Committee which projected a 55% black population for district 22. We note that the City of Augusta, which is

53% black, recently elected a black candidate to the position of mayor. We note further that the asserted reason for the district in the submitted plan, namely, keeping the City of Augusta intact, appears to have been accomplished also in the 55% alternative. Thus, the rejection of the Chairman's plan and the reduction of black population in district 22 may have a significant detrimental impact on black voting strength.

Our concerns regarding the House reapportionment plan are limited to the manner in which the plan affects Dougherty County. The information we have indicates that the black population in Dougherty County has increased significantly in the past decade and is concentrated in defineable areas of the county. Under the existing plan the districts which incorporate these black concentrations (Districts 131, 132, 133, and 134) are 13.5%, 80.4%, 50.8% and 25% black, respectively. In the proposed plan, however, the comparable four districts (Districts 132, 133, 134 and 140) are 73.5%, 10.5%, 39.1% and 45.9% black, respectively. Accordingly, whereas blacks constitute a controlling majority in one district and a nominal majority in another in the present plan, they will constitute a majority in only one district under the proposed plan, in spite of their increase in the population. In our view this would, under Beer v. United States, 425 U.S. 130 (1976), be impermissible retrogression in the position of the affected minority.

We have been presented with no justification for this apparently unnecessary fragmentation of the black population concentration, and our analysis reveals none. Moreover, our research and analysis further indicate that by avoiding this unnecessary fragmentation the likely result would be a plan in which the black community would have a reasonable opportunity to elect candidates of its choice in two of the four districts affecting Dougherty County.

For these reasons I am unable to conclude that the state has satisfied its burden of demonstrating that the proposed reapportionment plans for the Georgia House and Senate do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race. Thus, on behalf of the Attorney General, I interpose Section 5 objections to both plans.

As indicated above, the concerns which led to these objections are limited to a small number of districts. If the state takes action to remedy these concerns we believe that the plans could receive prompt Section 5 preclearance. We would also be willing to reconsider the objection, pursuant to the applicable provisions of the Procedures for the Administration of Section 5 (28 C.F.R. §51.44) if additional information is available indicating that our concerns are not well-founded.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the House and Senate reapportionment plans have neither the purpose nor effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until the objections are withdrawn or a judgment from the District of Columbia court is obtained, the effect of these objections is to render the redistricting of the Georgia House and Senate as authorized by Act No. 3 (1981) and Act No. 4 (1981) legally unenforceable.

If you have any questions concerning this letter, please feel free to call Carl Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
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