



U.S. Department of Justice

Civil Rights Division

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Office of the Assistant Attorney General

Washington, D.C. 20530

November 30, 2009

Walter G. Elliott, Esq.  
Elliott, Blackburn, Barnes & Gooding  
3016 North Patterson Street  
Valdosta, Georgia 31602

Dear Mr. Elliott:

This refers to Act No. 247 (HB 756) (2009), insofar as it provides for a redistricting plan and the implementation schedule for the county commission in Lowndes County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our August 21, 2009, request for additional information through November 13, 2009.

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 county's previous submissions. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed changes have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group. *Georgia v. United States*, 411 U.S. 526 (1973). *Procedures for the Administration of Section 5 of the Voting Rights Act*, 28 C.F.R. 51.52 (c). For the reasons discussed below, I cannot conclude that the county's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2009 redistricting plan.

According to the 2000 Census, the county has a total population of 92,115 persons, of whom 31,311 (34.0%) are African American. Of the 67,981 persons of voting age, 21,171 (31.1%) are black persons. According to the American Community Survey, conducted between January 2006 and December 2008, the total population of the county is estimated to be 102,187 of whom 34,120 (33.4%) are black persons.

The county's proposed redistricting plan adds two single-member commissioner districts that overlay the existing commissioner districts and divide the county in half. Proposed District 4 encompasses the eastern part of the county and, based on the 2000 Census, has a total black population of 49.0 percent. The second district covers the western part of the county. It has a total black population of 19.3 percent, also based on 2000 Census data.

Based on our analysis, the county's proposed plan unnecessarily reduces the level of black voting strength in the county and thereby reduces the ability of African Americans to elect their candidates of choice. Currently, African American voters have the ability to elect a candidate of choice in one of the three single-member districts in the county. Under the proposed plan, African Americans will have the ability to elect a candidate of choice in one out of five single-member districts. Thus, the plan, which places black voters in a worse electoral position than under the benchmark plan, is retrogressive.

Moreover, the evidence establishes that this retrogression was avoidable. Several alternatives exist that meet the county's stated criteria and do not have a prohibited retrogressive effect. For example, it is possible to create an illustrative plan that follows the county's 3-2 configuration, but which, unlike the county's proposed plan, creates a second district in which census data show that the African American community would be able to elect a candidate of choice. The most recent data indicate that African Americans constitute 53 percent of the registered voters in this illustrative district. Although the county's contention that the 2000 Census data understate this district's current African American population percentage appears to be correct, it does not alter our conclusion, based on an analysis of voter registration data from October 2009, that the district would not afford black voters the ability to elect candidates of choice to office.

In addition, our analysis of the evidence precludes a determination that the county has met its burden of showing that the proposed plan was not adopted, at least in part, with the purpose of making minority voters worse off.

First, the retrogressive impact of the proposed plan was easily avoidable. The county justifies the proposed plan by stating that a minority commissioner helped develop the plan, the black population in proposed District 4 is the largest racial group in the district, and the proposed plan has a stronger minority population than previously-developed alternative plans. As noted, *supra*, proposed District 4 required only minimal adjustments to create a district in which black voters would have the ability to elect their candidates of choice, resulting in an overall plan that did not retrogress minority voting strength.

In addition, despite the fact that the county's primary redistricting criterion was to maintain or increase minority voting strength, the proposed plan does not meet that goal. In fact, not only does it fail to maintain black voting strength in the county, it has the opposite effect; it decreases it. Thus, the county's proposal deviates from its own redistricting criteria to make minority voters worse off.

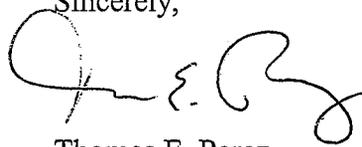
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. *Georgia v. United States*, 411 U.S. 526 (1973); 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance.

Therefore, on behalf of the Attorney General, I must object to the county's 2009 redistricting plan. Because the implementation schedule is directly related to the validity of the redistricting plan, it would be inappropriate for the Attorney General to make a determination on this related change. 28 C.F.R. 51.35.

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 Lowndes County 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,

A handwritten signature in black ink, appearing to read 'T. E. Perez', with a stylized flourish at the end.

Thomas E. Perez  
Assistant Attorney General