



U.S. Department of Justice

Civil Rights Division

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Office of the Assistant Attorney General

Washington, D.C. 20530

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Hinesville, Georgia 31310

B. Jay Swindell, Esq.  
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Dear Messrs. Johnson and Swindell:

This refers to Act No. 384 (H.B. 1075) (2012), which provides the redistricting plan for the Board of Education; and Act No. 383 (H.B. 1074) (2012), which provides the redistricting plan for the Board of Commissioners of Long County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your response to our July 2, 2012, request for additional information on July 13, 2012; additional information was received through August 23, 2012.

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information. Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that the proposed changes neither have a discriminatory purpose nor will have a discriminatory effect. *Georgia v. United States*, 411 U.S. 526 (1973); *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965*, 28 C.F.R. 51.52. As discussed further below, I cannot conclude that the county's burden under Section 5 has been sustained with regard to the proposed redistricting plans. Therefore, on behalf of the Attorney General, I must object to both plans.

According to the 2010 Census, the county has a total population of 14,464 persons, of whom 3,687 (25.5%) are African American. Of the 10,045 persons of voting age, 2,483 (24.7%) are African American. From 2000 to 2010, the county's total population increased by 40.4 percent, with its black population increasing 49.1 percent and its white population increasing 27.1 percent. The total black population increased from 21.6 percent in 1990 to 25.5 percent in 2010. The county's Hispanic population has grown to 12.3 percent.

Long County is governed by a five-member board of commissioners, which elects a chairperson from among its members. The Long County Board of Education, which also consists of five members and elects a chairperson, is the governing body for the school district. The commissioners and school board members are elected by majority vote from five single-member districts to four-year concurrent terms in even-numbered years from coterminous districts. Commissioner elections are partisan, with a primary election in July, a runoff election, if necessary, in August, and the general election in November. Board of education contests are nonpartisan.

The benchmark method of election and districting plan result from the 1987 settlement of a lawsuit challenging the at-large method of electing members of the county commission under Section 2 of the Voting Rights Act, 42 U.S.C. 1973. *Glover v. Long County Bd. of Comm'rs*, No. 2:87-cv-20 (S.D. Ga.). The county has not redistricted in twenty-five years, since adopting the single-member district system to comply with the court's order.

We start our review with an analysis of whether the county has established the absence of a discriminatory effect. 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 opportunity to exercise the electoral franchise effectively). *Beer v. United States*, 425 U.S. 130, 141 (1976).

Under the benchmark plans, black persons constitute 47.1 percent of the total population, 47.2 percent of the voting age population, and 44.5 percent of the registered voters in District 3. Our analysis of electoral behavior establishes that voting is racially polarized throughout the county. We have concluded, however, that there is a sufficient level of consistent crossover voting by white persons in the benchmark district to provide black voters with the ability to elect their candidate of choice. Accordingly, under the benchmark plans, African American voters have the ability to elect candidates of choice in District 3.

Under the proposed plans, the black voting age population of District 3 decreases by 6.7 percentage points, from 47.2 to 40.5 percent, and the total black population decreases by 5.3 percentage points, from 47.1 to 41.8 percent. Due to this change, African American voters experience a retrogression of their ability to elect candidates of choice. The evidence also indicates that this retrogression was avoidable.

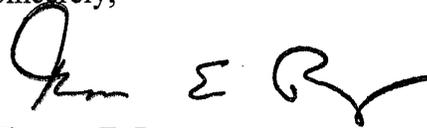
We recognize that as a result of the county's twenty-five year hiatus since its last redistricting, the release of the 2010 Census data would require significant population movement to meet the one-person, one-vote standard. "Section 5 does not require jurisdictions to violate the one-person, one-vote principle." *Guidance Concerning Redistricting Under Section 5 of the Voting Act*, 76 Fed. Reg. 7470, 7472 (Feb. 9, 2011). To satisfy the constitutional requirement, the county expanded District 3, which was significantly underpopulated, to the east along Highway 84. The district then expands to the northeast in the eastern portion of the county, while failing to add any population to the southeast. This configuration precluded the county

from enacting non-retrogressive plans. Illustrative plans indicate that had the county continued to expand District 3 to the southeast, it could have devised a plan that was not retrogressive while adhering equally well to the county's other redistricting criteria. *Id.*

Because we conclude that the county has failed to meet its burden of demonstrating that the proposed plans will not have the statutorily-prohibited effect, we do not make any determination as to whether it has established the plans were not adopted with a discriminatory purpose.

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 changes neither have 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. 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 the county obtains the requisite judgment from that court, the submitted changes continue 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 Long County and the Long County School District plan to take concerning this matter. If you have any questions, you should contact Robert S. Berman, a deputy chief in the Voting Section, at 202/514-8690.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom E. Perez', written in a cursive style.

Thomas E. Perez  
Assistant Attorney General