U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 12, 2001

Francis I. Cantwell, Esq.
Regan, Cantwell and Stent
P.O. Box 1001
Charleston, South Carolina 29402

Dear Ms. Cantwell:

This refers to the 2001 redistricting plan for the City of Charleston in Berkeley and Charleston Counties, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your most recent responses to our August 3, 2001, request for additional information on August 7, 8, 13, and 15, 2001.

We have carefully considered the information you have provided, as well as information in our files, Census data, and information and comments from other interested persons. According to the 2000 Census, black persons represent 34.0 percent of the city's total population and 30.1 percent of its voting age population.

The Charleston City Council consists of a mayor elected at large and 12 councilmembers elected from single-member districts. According to the 2000 Census, six districts are majority black in total population, ranging from 56.0 to 70.6 percent. Five of these districts are also majority black in voting age population. The one exception is District 2, which has a 48.1 percent black voting age population.

Upon its implementation, the proposed redistricting plan would decrease the number of majority-minority districts to five, a result which our analysis of demographic changes in Charleston indicates is unavoidable and necessary to comply with the constitutional requirement of one person-one vote.

However, it appears that no constitutional or legal imperative required that the area comprising existing District 2 be combined with District 4 in a revised District 4. Our concerns regarding the proposed combination of these districts stems from the rapid population growth projected for Daniel Island, which is located in proposed District 4. According to information the city has provided, significant residential development in this area is already under way. The city estimates that the total number of building permits over the next five years in the Berkeley County portion of the city is 1,131. Using the 2.75 persons per household figure recommended by the city to compute the population projections for the Berkeley County portion, the future additional total population would be 3,110. As of July 1, 2001, the Berkeley County Voter Registrar recorded the City of Charleston portion of Cainhoy Precinct as having a total of 567 registered voters, of whom only 8 (1.4%) are black.

Further, as you have conceded, it is likely that the dwellings on Daniel Island (primarily townhouses and single-family homes) will have mostly white residents in the future considering that the lowest priced townhouses are expected to cost approximately $160,000.

The city further estimates that 206 housing units in the Cainhoy area may cost less than $100,000, and possibly 40 percent of an anticipated 300-unit apartment complex would have reduced rents and be affordable for minorities. Our information is that while not all the prices of homes in the Cainhoy area (northeast of Daniel Island, and included in proposed District 4) have been finalized many of the designated low-income housing units in Cainhoy will not in fact be affordable for minorities in the area.

Further, while proposed District 4 may continue to be a district in which minority voters have an equal opportunity to elect a candidate of their choice in the next council election, "Section 5 looks not only to the present effects of changes but to their future effects as well." Reno v. Bossier Parish School Board, 528 U.S. 320, 340 (2000), citing City of Pleasant Grove v. United States, 479 U.S. 462, 471 (1987). The available information on demographic changes and the continued presence of racial bloc voting in city elections, indicates that in a matter of only a few years, proposed District 4 will no longer be a district in which minority voters will be able to elect a candidate of their choice.

Future retrogression in minority voting strength in District 4 is neither required nor inevitable. Our analysis indicates that future retrogression in District 4 could be minimized by adjusting the district's boundaries. One such slightly altered plan discussed in our August 13, 2001, meeting in Washington would place Daniel Island in a majority white district and, in exchange, a residential area that is already well established could be placed in District 4. Such a plan could maintain minority voting strength in District 4 at its current level for a significant period of time. The city officials stated that they considered such a plan but did not choose it because it conflicts with some of the city's redistricting goals, such as "neighborhood cohesiveness and maintaining constituent consistency." These reasons for not pursuing such an alternative plan are not persuasive since the existing plan already separates neighborhoods (downtown and on Daniel Island) and divides the portion of the city in Berkeley County between three city council districts that are each mainly on a separate land body.

We believe that a slightly altered plan would not be in conflict with the city's redistricting goals as they have been presented to us in your June 1, 2001, submission letter or as they are reflected in the city's existing redistricting plan. However, if the city believes that such an altered plan conflicts with the city's redistricting goals, we note that "compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria. For example, criteria which require the jurisdiction to make the least change to existing district boundaries, follow county, city or precinct boundaries, protect incumbents, preserve partisan balance, or in some cases require a certain level of compactness of district boundaries may need to give way to some degree to avoid retrogression." See Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412 (Jan. 18, 2001) (copy enclosed).

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); see also the Procedures for the Administration of Section 5 (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 2001 redistricting plan.

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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, 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, the submitted plan 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 City of Charleston plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), Special Section 5 Counsel in the Voting Section.

Sincerely,

R. Alex Acosta
Acting Assistant Attorney General
Civil Rights Division