U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 31 2002

Mr. Walter C. Lee
Superintendent, Parish School Board
201 Crosby Street
Mansfield, Louisiana 71052

Mr. B.D. Mitchell
President, Parish Police Jury
P.O. Box 898
Mansfield, Louisiana 71052

Dear Messrs. Lee and Mitchell:

This refers to the 2002 redistricting plan for the DeSoto Parish School District; and the related voting precinct and polling place changes for DeSoto Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received the school district's responses to our August 23, 2002, request for additional information on September 16 and November 1, 2002. Upon receipt of the school district's completed response, we reopened the parish's submission.

With regard to the redistricting plan, we have considered carefully the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the district's previous submissions. Based on our analysis of the information available to us, I am compelled to object to the submitted redistricting plan on behalf of the Attorney General.

The 2000 Census indicates that the district, which is coterminous with DeSoto Parish, has a total population of 25,494, of whom 10,724 (42.1%) are black persons. The total voting age population of the parish is 18,264, of whom 7,146 (39.1%) are black persons. The school board consists of 11 board members, elected from single-member districts in non-partisan elections, by majority vote, to four-year terms.

Under 2000 Census data, five of the eleven districts in the current, or benchmark, plan have a total population that is majority black and which, in fact, have been electing the candidate of choice of black voters. In four of these five districts under the proposed plan, black voters will continue to have the ability to elect candidates of their choice. Our analysis, however, shows that this is not true for the fifth district, District 9. Under the benchmark plan, black voters in that district have the ability to elect their candidates of choice, and they will not have that same ability under the proposed plan.

Our analysis shows that elections in DeSoto Parish are marked by a pattern of racially polarized voting. Moreover, we analyzed several parish-wide elections to determine whether black voters in District 9 have the present ability to elect candidates of choice under the benchmark plan and whether they would continue to have that ability under the proposed plan. We determined that, while under the benchmark plan black voters did indeed have the ability to elect a candidate of choice, under the proposed plan they will not. Accordingly, the implementation of the proposed plan will result in a retrogression in the minority voters effective exercise of their electoral franchise.

This retrogression was avoidable. Our analysis of the information submitted indicates that the reduction of the black population percentage in District 9 was not required to comply with the redistricting criteria used by the school district. First, the district did not require any modification to comply with constitutional requirements. Second, the school district's own consultant presented an alternative plan, Plan 6, which satisfied traditional redistricting criteria and maintained the benchmark district's demographics.

A proposed change has a discriminatory effect when it will "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 125, 141 (1976). If the proposed plan materially reduces the ability of minority voters to elect candidates of their choice to a level less than what they enjoyed under the benchmark plan, preclearance must be denied. State of Georgia v. Ashcroft, 195 F.Supp 2d. 25 (D.D.C. 2002). In Texas v. United States, the court held that "preclearance must be denied under the 'effects' prong of Section 5 if a new system places minority voters in a weaker position than the existing system." 866 F.Supp. 20, 27 (D.D.C. 1994).

With respect to the district's ability to demonstrate that the plan was adopted without a prohibited purpose, in Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266 (1977), the Supreme Court identified the analytical structure for determining whether racially discriminatory intent exists. This approach requires an inquiry into the following: 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.

Here the retrogressive effect, as noted above, was easily avoidable. The school board was not compelled to redraw the district, and even if it wished to do so, it was presented with an alternative that met all of its legitimate criteria while maintaining the minority community's electoral ability in District 9, an alternative that the board rejected. Most revealing is the fact that the board has indicated that it sought to devise a redistricting plan resulting in four districts where black persons were a majority of the population, similar to the benchmark plan implemented in 1994. However, your plan does not take into account the current population of the district according to the 2000 Census as required by the Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412 (January 18, 2001). The 2000 data shows that the current District 9 is a fifth district with a majority black population, and our analysis establishes that District 9 is now one in which blacks can elect a candidate of choice. In these circumstances, we cannot conclude that the district will be able to sustain its burden, as it must, that the action in question was not motivated by an intent to retrogress.

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); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); 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 submitted 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, 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 change continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Please note that the Attorney General will make no determination regarding the submitted voting precinct and polling place changes because those changes are dependent upon the objected-to redistricting plan.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the DeSoto Parish School District plans to take concerning this matter. If you have any questions, you should call Ms. Maureen S. Riordan (202-353-2087), an attorney in the Voting Section. Refer to File No. 2002-2926 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Andrew E. Lelling
Acting Assistant Attorney
General