U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

September 28, 1993

Virginia B. Ragle, Esq.
Assistant Attorney General
State of Alaska
P.O. Box 110300--State Capitol
Juneau, Alaska 99811-0300

Dear Ms. Ragle:

This refers to the 1993 redistricting plans for the state House and Senate in Alaska, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on June 4, 1993; on August 3, 1993, we informed you that our receipt on July 30, 1993 of material supplemental information extended our deadline for making a determination to September 28, 1993. Additional supplemental information was received on September 21 and 27, 1993.

We have considered carefully the information you have provided, as well as comments and information from other persons. The Interim Plan ordered into effect by the Alaska state courts and precleared on July 8, 1992 serves as the benchmark for our analysis. State of Texas v. United States, 785 F.Supp. 201, 205 (D.D.C. 1992); see the Procedures for the Administration of Section 5 (28 C.F.R. 51.54(b)).

The proposed plan reduces the Alaskan Native share of the voting age population in House District 36 from 55.7 percent to 50.6 percent. It moves approximately 700 residents of the Lake and Peninsula Borough (among whom 70 percent are Alaskan Native) from District 36 to District 40, and moves approximately 1,080 residents (among whom over 90 percent are white) from the Copper River Valley into District 36 from District 35. Senate District R, which includes House District 36, declines from 33.5 percent to 30.5 percent in Alaskan Native voting age population, due to the removal of the majority-Native areas in the Lake and Peninsula Borough and the addition of approximately 2,150 persons

(among whom over 90 percent are white) from the Palmer area. Athabascan Indians are the predominant minority language group in House District 36 and Senate District R.

Although the state courts do not appear specifically to have identified any changes to House District 36 or Senate District R that are required as a matter of state law, we have considered the state's contention that unification of the Lake and Peninsula Borough is a primary consideration under state law. Our analysis indicates that even if removal of the Lake and Peninsula Borough population from District 36 is required as a matter of state law, such a change does not require the reduction in Alaskan Native percentage occasioned by the proposed addition of population to District 36 from the Copper River Valley area.

Several areas with significantly greater Alaskan Native populations than the Copper River area, including the Nenana area and two villages in the Kuskokwim River area, were included in District 36 in one or more alternative plans considered by the Board. Indeed, the Nenana area had been included in Native-majority Interior districts under prior state redistricting plans. The information available to us indicates that the inclusion of one or more of these areas in House District 36 could have lessened or eliminated the reduction in the Alaskan Native share of the population in that district. Although your submission has provided evidence of opposition to placing Nenana into District 36, there appears to have been significant support for such a change, particularly within the Athabascan Indian community.

The state also contends that it has a significant interest in placing all residents of the Copper River Valley into District 36. Unlike the Lake and Peninsula Borough, however, the Copper River Valley is not an organized political subdivision. Nor does it appear that the objective of uniting specific communities along the length of the Copper River Valley required the addition of the entire region to House District 36.

In addition, the state contends that the proposed reductions in the Alaskan Native percentage in House District 36 and Senate District R are not significant because the 1992 election results show that voting is not racially polarized in the areas

encompassed by those districts. However, our analysis indicates that although Alaskan Native candidates who were the preferred candidates among Alaskan Native voters were elected in 1992 to both House District 36 and Senate District R, there appears to have been a pattern of racially polarized voting in elections involving these districts, in which white voters' preferences differed from those of Alaskan Native voters. In these circumstances, the proposed reduction in the Alaskan Native voting strength would appear to diminish the ability of Alaskan Native voters to elect candidates of their choice.

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. See 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, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed redistricting plans for the state Senate and House to the extent that each incorporates the proposed configuration for House District 36 discussed above.

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 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. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1993 redistricting plans continue to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10, 51.11, and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the state plans to take concerning this matter. If you have any questions, you should call Robert A. Kengle (202-514-6196), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

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Office of the Assistant Attorney General *Washington, D.C. 20035*

February 11, 1994

Virginia B. Ragle, Esq.
Assistant Attorney General
State of Alaska
P.O. Box 110300--State Capitol
Juneau, Alaska 99811-0300

Dear Ms. Ragle:

This refers to your request that the Attorney General reconsider the September 28, 1993, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1993 redistricting plans for the state House and Senate in Alaska. We received your request on December 13, 1993. We received supplemental information from the state on January 10 and 11, and February 2, 1994.

We have reconsidered our earlier determination in this matter based upon the information and arguments you have advanced in support of your request, along with the other information in our files and comments received from other interested parties.

Our September 28, 1993, objection letter noted particular concerns about the effect upon Alaskan Native voters of the boundary lines for House District 36 and Senate District R, which includes all of House District 36. Specifically, the 1993 plans would result in reductions in the Alaskan Native share of the voting age population in House District 36 (from 55.7 percent to 50.6 percent) and in Senate District R (from 33.5 percent to 30.5 percent). We evaluated, but found unpersuasive, the state's explanation for the rejection of alternative plans that would have lessened or eliminated the decrease in Alaskan Native population percentages in House District 36. Against the backdrop of racially polarized voting patterns that appeared to be prevalent in recent elections involving House District 36

and Senate District R, we concluded that the state had not met its burden of showing that the proposed plans would not adversely affect the ability of Alaskan Native voters to elect their candidates of choice.

In support of its request for reconsideration, the state submits its expert's analyses of voting patterns in the 1992 elections in House District 36 and Senate District R. While in the past, the state had argued that voting was not racially polarized in those elections, the state now concedes, as its expert has found, that voting was polarized. The state argues, however, that despite the evident polarization the proposed decreases in the Alaskan Native voting age population percentages for both districts would not adversely affect the ability of Alaskan Native voters to elect their candidates of choice. As support for this contention, the state suggests that its expert's estimates of white crossover voting for candidates supported by Alaskan Native voters in 1992 demonstrates that candidates supported by Alaskan Native voters would continue to be elected in the affected districts.

Our review of the state's data and other information presented confirms persistent and marked differences in voting behavior between Alaskan Native voters and white voters in elections in the Interior, including elections in the affected districts. More generally, the legislative candidates supported by Alaskan Native voters usually have been successful in Interior districts only when the district had a substantial Alaskan Native majority. Within this context of racially polarized voting, the decrease in the Alaskan Native share of the voting age population in House District 36 (and the resulting decrease in Senate District R) would make it more difficult for Alaskan Native voters to elect candidates of their choice, even though the defeat of the Alaskan Natives' preferred candidates might not be ensured by the proposed reductions.

Furthermore, our analysis continues to suggest that the proposed changes to House District 36 were adopted notwithstanding the availability of several districting configurations that would lessen or eliminate the reduction in the Alaskan Native share of the population in House District 36. For example, the significant concentration of Alaskan Native voters in Nenana could be included in a way that recognizes the Alaskan Native voting strength in that area. The state maintains that any approach that incorporates this area into House District 36 is not uniformly accepted within the Alaskan Native community. But the information made available to us continues to suggest that there is significant support within the minority community for such a configuration. Moreover, state law districting criteria appear neither to preclude such alternative configurations, nor to require the configuration you have proposed.

Under Section 5, the state has the burden of showing that the 1993 redistricting plans would not 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. 130, 141 (1976). In light of all these considerations, I remain unable to conclude that the State of Alaska has carried its burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the proposed redistricting plans for the state Senate and House to the extent that each incorporates the proposed configuration for House District 36 discussed above.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed 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. We remind you that until such judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change is legally unenforceable. 28 C.F.R. 51.10, 51.11, and 51.48(c). Clark v. Roemer, 111 S.Ct. 2096 (1991).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Alaska plans to take concerning this matter. If you have any questions, you should call Robert A. Kengle (202-514-6196), an attorney in the Voting Section.

Sincerely,

James P. Turner /AR

James P. Turner
Acting Assistant Attorney General
Civil Rights Division