U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

March 15, 1996

Dennis R. Dunn
Senior Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300

Dear Mr. Dunn:

This refers to Georgia Act Nos. EX2 and EX3 (1995), which provide redistricting plans for the Georgia State House and Senate, 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 response to our request for additional information on January 19, 1996; supplemental information was received on January 26, February 7, and February 20, 1996.

We have considered carefully the information provided in this submission and in the State's submissions of its 1991 and 1992 State House and Senate redistricting plans, as well as Census data, information and comments received from other interested persons, and information contained in the record of Johnson v. Miller, 864 F. Supp. 1354 (S.D. Ga. 1994). We have evaluated all of this information in light of the decisions of the United States Supreme Court which set forth the standards for making preclearance determinations under Section 5 of the Voting Rights Act. E.g., City of Rome v. United States, 446 U.S. 156, 172 (1980); Beer v. United States, 425 U.S. 130 (1976). Under Section 5, 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); see also the Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In Beer v. United States, the Supreme Court made clear that a voting change which diminishes "the ability of minority groups to participate in the political process and to elect their choices to office" is retrogressive and should not be precleared under Section 5. 425 U.S. at 141, quoting H.R. Rep. No. 94-196, p.60 (1975).

The appropriate benchmark used to determine whether a voting change makes minority voters worse off is "the voting practice or procedure in effect at the time of the submission," so long as the existing voting practice is legally enforceable under Section 5. See Procedures for the Administration of Section 5, 28 CFR 51.54(b). Under the circumstances of this submission, the State House and Senate redistricting plans embodied in O.C.G.A. §§ 28-2-1, 28-2-2, as modified slightly by six "limited redistrictings," and as utilized in the 1992 and 1994 elections, constitute the appropriate benchmarks.

In its submission of the 1995 State House and Senate redistricting plans, the State acknowledges that the submitted plans reduce the black population significantly in a number of State House and Senate districts. The State also acknowledges that the proposed plans reduce the black population in several House and Senate Districts from a majority to a minority. Indeed, in several House districts the black population was reduced by as much as 25 percentage points. As the expert testimony offered by the State in Johnson v. Miller demonstrated, it is generally true that such reductions in black population (and similarly in black voter registration) correlate with diminished chances of electoral success for black candidates. Our analysis of election returns throughout Georgia, and in the areas discussed below, as well as the expert testimony in Johnson v. Miller, clearly show that, with very few exceptions, when they had a choice between black and white candidates black voters throughout the State preferred those black candidates.

The State justifies these significant reductions in black voting opportunities by asserting generally that they were "required by" the decisions in Johnson v. Miller, 864 F. Supp. 1354 (S.D. Ga. 1994), and Miller v. Johnson, 115 S.Ct. 2475 (1995). Neither the cited court decisions, nor any other court decisions, directly address the Georgia State House and Senate plans. However, the State apparently reads those decisions as applicable because of its belief that the purported "'maximization' policy of the DOJ," which those courts criticized, was "the driving force behind the 1991-92 process" of redistricting the State House and Senate plans.

We are aware that in Johnson v. Miller, the court condemned many aspects of Georgia's 1991 congressional redistricting process, including what the court found to be the imposition by the Department of Justice of goals of "maximization" of black voting strength. The Attorney General and the Department of

Justice do not have a policy of requiring "maximization" of black voting strength; rather we evaluate each submitted voting change based on the available facts and existing law. Indeed, the absence of such a maximization policy is demonstrated by the 1991-92 state legislative redistricting process and our Section 5 review. Put simply, the redistricting plans precleared by the Attorney General in 1992 for both the State House and Senate created fewer majority-black districts than did various alternative plans, including the Brooks-McKinney, so-called "max black" plan.

A reduction in minority voting opportunity that is required by the United States Constitution does not violate Section 5. Indeed, we have long applied this principle in the context of voting changes made by jurisdictions in order to comply with the constitutional one-person, one-vote requirement. See 52 Fed. Reg. 488 (Jan. 6, 1987). This same principle applies to the Equal Protection holdings of the Supreme Court in Shaw v. Reno, 113 S.Ct. 2816 (1993), and Miller v. Johnson, 115 S.Ct. 2475 (1995). Those holdings apply to the circumstances presented by the submission pending before us; we note, however, that these decisions do not address the application of this Equal Protection claim to state legislative districting plans generally or to Georgia's current State House and Senate plans specifically. Consequently, each of the significant reductions in minority voting strength proposed by the State must be evaluated in light of the particular circumstances surrounding the altered districts.

The 1995 Redistricting Process

Information we have received from your submission and other sources clearly indicates that a primary motivating factor for the State in its determination to make the submitted changes to the State House and Senate plans was the threat of a court challenge to the current plans by Mr. Lee Parks, the plaintiffs' lawyer in Johnson v. Miller. The legislative transcripts include numerous references to a letter from Mr. Parks enumerating a number of House and Senate districts he believed to be constitutionally invalid, yet we have not been provided with a copy of this letter, despite our requests. Based upon Mr. Parks' transcribed testimony, it appears that many of the districts set forth in his letter were not substantially changed while, almost without exception, the majority-black districts set forth in the letter that currently are represented by white incumbents were

substantially changed, resulting in a substantial reduction of the districts' black population percentage. In fact, the State has acknowledged that "[n]o consensus could be reached on the ultimate effects of Johnson and its interaction with the Voting Rights Act" during the 1995 Special Legislative Session. Supplemental Information Submission, Jan. 18, 1996, at 17.

The information in the State's submission also demonstrates that the 1995 redistricting process departed in ways that were significant, both procedurally and substantively, from the State's last redistricting process in 1991. In 1995, the Georgia legislature did not adopt guidelines for redistricting, despite several attempts to do so; the Reapportionment Services staff kept no records of appointments, meetings with legislators, or redistricting program computer usage; no hearings were conducted in order to elicit public opinion from local communities around the State; and very little time in committee meetings or floor debate was accorded the redistricting of the State House and Senate. The available information indicates that Linda Meggers and Penny Williams of the State's Reapportionment Staff office drew many of the "working plans;" otherwise the State has refused to identify the "counsel and other state officials" who participated in the "independent evaluation of the constitutionality of the House and Senate districts." Supplemental Information Submission, Jan. 18, 1996, at 15. Several members of the legislature have informed us that they were first made aware that their districts had been redrawn shortly before they were asked to vote on their plan, that they had to request additional time to examine the proposed redistricting plans created by the State's Reapportionment Office before such votes were taken, and that occasionally these requests were denied. Such departures from the normal procedural sequence are relevant factors to consider in evaluating decision-makers' motivation for a particular action. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266-268 (1977).

Proposed Senate Redistricting Plan

The Georgia Senate consists of 56 members, elected from single-member districts. The current redistricting plan includes 13 districts with majority-black total populations, nine of which are represented by black State Senators. Only one majority-white district in the current plan is represented by a black State Senator. The proposed plan for the Georgia Senate makes changes to 46 of the 56 Senate districts. The proposed districting plan includes 11 districts with a majority-black total population.

The proposed Senate plan includes changes that significantly diminish the opportunities for black voters in the area of Clayton and Dekalb Counties. The black percentage of the population in District 55 has been reduced from 60 to 40.3 percent black voting age, according to the 1990 Census. We do not dispute the State's contention that the black population in the area of District 55 is growing and have attempted to determine from voter registration and turnout data whether the population growth has been sufficient to offset the reduction in minority voting strength indicated by Census data. However, due to difficulties in matching the available precinct maps with registration and voting data, we have had to rely on the Census data submitted by the State to assess the opportunities for black voters in proposed District 55. Given the State's burden under Section 5, we must conclude that proposed District 55 would not provide black voters with an opportunity to elect their candidates of choice.

The State contends that the changes to District 55 were necessitated by the removal of Clayton County from adjoining District 10, which in turn was justified by an alleged lack of community of interest with Dekalb County and the so-called "landbridge" connecting these two areas. This explanation fails to justify the retrogression in black voting strength in District 55. First, contrary to the State's contention, the available information supports the conclusion that a strong community of interest exists between the neighborhoods in Clayton and Dekalb Counties that are combined in current District 10. Second, if the so-called "landbridge" connecting those neighborhoods is constitutionally problematic, District 10 could have been reconfigured to make the district boundaries more regularly shaped while continuing to recognize District 10's community of interest and not significantly reducing the black population in District 55. Moreover, while we believe the State is incorrect in its conclusion that the Constitution requires District 10 to be drawn wholly within Dekalb County, even if that were true, it is clear that it was not necessary to pack the black population in southern Dekalb County into Districts 10 and 43, and that alleviating this packing would have allowed the State to avoid the retrogression in District 55.

The proposed Senate plan also includes changes that significantly diminish the opportunities for black voters in Southwest Georgia, near the Alabama border. Reducing the black voting age population in District 12 from nearly 58 percent to barely 50 percent appears to eliminate the opportunity that black voters currently have in this district, which local black elected officials in the area believe will be fully realized when the

current long-term incumbent chooses not to run for re-election. District 12 in the current plan is reasonably compact, splits no precincts, and is not oddly-shaped; in fact, its shape and demographics resemble the Senate district drawn in this area in the State's 1991 working plan, long before any Section 5 objections were interposed by the Department of Justice. While the proposed plan splits one less county than does the current plan, that county split could have been made whole without significantly reducing District 12's black population. The State's explanation for the changes, i.e., that it was necessary to split Dougherty County "in a less disruptive" manner, does not adequately justify the significant retrogression in this District.

Proposed House Redistricting Plan

The Georgia House of Representatives includes 180 members elected from single-member districts. The current districting plan includes 42 districts with majority-black total populations, 31 of which are represented by black State Representatives. Only one majority-white district in the current plan is represented by a black State Representative. The proposed plan for the Georgia House makes changes to 67 of the 180 House districts, and reduces the number of majority-black districts from 42 to 37.

The proposed House plan includes changes that significantly diminish the opportunities for black voters in East-central Georgia, particularly because of the manner in which Districts 120 and 121 are reconfigured. District 121 currently has a black voting age population of nearly 59 percent and includes Hancock, Washington and part of Baldwin Counties. The proposed plan essentially replaces District 121 with District 120, which includes Hancock, Taliaferro, Warren, Glascock, and part of Baldwin Counties, but reduces the black voting age population to only 51.5 percent. While the current District 121 recognizes the community of interest between the predominantly black neighborhoods in the City of Milledgeville and the majority black counties to the east (particularly Hancock County) by uniting them in one district, proposed District 120 fails to do this, as its Baldwin County portion stops short of Milledgeville. By using this configuration, the black candidate from Milledgeville who has mounted strong challenges against the current District 121 incumbent is excluded from the proposed District 120, which has no resident incumbent House member. Given the racial disparities in socio-economic status and voting

patterns between black and white persons in this area, the reduction in the black voting age population from current District 121 to proposed District 120 and the exclusion of the Milledgeville neighborhoods from proposed District 120, the changes to East-central Georgia will substantially diminish the electoral opportunities of black voters.

The State contends that the proposed changes in East-central Georgia were necessary to eliminate county splits and the split in the City of Milledgeville. This does not appear to rise to the level of a constitutional justification for the retrogression in black voting opportunities, because there is no suggestion that the current districting configurations in rural East-central Georgia were predominantly motivated by race and thus would require correction. This rural area of the State was not the subject of a Section 5 objection during the 1991-92 redistricting process, and the manner in which District 121 splits Milledgeville in the current plan appears to comport with the State's general redistricting principles as applied to similar city and county splits in majority-white districts, such as the split of the City of Moultrie (Colquitt County) between three majority-white districts. Thus, these explanations are not adequate to justify the significant retrogression in this area.

The proposed House plan also includes changes that significantly diminish the opportunities for black voters in West-central Georgia, by reducing the black voting age population in proposed District 131 from 56 percent to 47 percent. It is likely that this reduction will substantially reduce the opportunity black voters currently have to elect a candidate of choice, due to the racially polarized voting evident from an analysis of state and local elections. The State contends that this reduction was necessary because of the manner in which District 131 splits Troup and Coweta Counties; however, the proposed District continues to split both Troup County and the City of LaGrange, while Coweta County remains split between four other House Districts in the proposed plan. The State attempts to justify this retrogression by claiming that current District 131 "was developed for the second plan submitted to the DOJ in response to the DOJ's policy of maximization." Supplemental Information Submission, Jan. 18, 1996, at 36. This is incorrect, however, as current District 131 is virtually unchanged from the plan adopted by the State in 1991. We understand that this District was drawn in 1991 by white incumbent Representatives in the area and was shaped, at least in part by their concerns. The State has offered no other explanation which would demonstrate

that race predominated in the drawing of current District 131. In these circumstances, and because it appears that current District 131 links areas in Meriwether, Troup, and Coweta that share strong community, cultural, and religious ties, the State has not met its burden of demonstrating that the retrogression caused by the proposed plan is justified.

The proposed House plan also includes changes that significantly diminish the opportunities for black voters in Chatham County, by reducing from three to two the number of districts in the county that are majority-black in voting age population. In particular, the black voting age population in District 151 is reduced from 56.3 percent to 46.9 percent. Analysis of election returns in this area demonstrates that voting generally is racially polarized and that the reduced black voting strength in District 151 will reduce the potential that black voters currently have to elect a candidate of their choice.

District 151, which is regularly shaped, is not asserted to be unconstitutional. The state contends, however, that the proposed changes to District 151 were necessary to cure the use of "narrow bridges and appendages," particularly a "corridor" that connects the bulk of current District 149 with Hunter Air Field, and to better represent communities of interest. The "corridor" in District 149 is consistent with the State's general redistricting principles as applied to connecting other military installations to majority-white districts, such as the connection of Fort Stewart in Liberty County to District 171 (which splits census blocks). There were alternative plan configurations introduced in 1991 with three majority-black districts in Chatham County that are more compact than the current plan, but apparently would not serve the State's incumbency concerns. With regard to representing communities of interest in the City of Savannah and Chatham County, the "Midtown" and "West Savannah" areas that generally correspond to Districts 151 and 149, respectively, have no agreed-upon boundaries. Indeed, one local state representative contends that the proposed changes weaken the community of interest in adjoining District 152 by crossing neighborhood boundaries. Thus, these explanations are not convincing and, therefore, do not justify the retrogression in this area.

The proposed House plan also includes changes that significantly diminish the opportunities for black voters to elect their candidates of choice in Southeast Georgia by reducing District 173 from a majority-black district (57 percent black

voting age population) -- the only majority-black district south of Savannah -- to a majority-white district (46 percent black voting age population). The State appears to contend that this change is justified by a reduction in the number of split precincts and in the amount of Liberty County population included in District 173. However, the plan adopted by the State in 1991 recognized the strong community of interest between McIntosh County and portions of the City of Brunswick in Glynn County, by combining these areas in the majority-white District 173 included in that redistricting plan. While the Liberty County portion of current District 173 was added in response to a Section 5 objection in 1992, there is a strong community of interest between that population and the remainder of District 173 because of the coastal concerns of the three counties, as well as cultural and economic links between the black communities united in the District. Moreover, the remainder of Liberty County is split between three white districts. Thus, the explanations offered by the State do not justify the retrogression caused by redrawing District 173 as in the proposed plan.

The proposed House plan also includes changes that significantly diminish the opportunities for black voters in Southwest Georgia, by transforming Districts 159, 178 and 179 from majority-black to majority-white districts and reducing the black voting age population in District 158 from 59 to 51 percent. Analysis of election returns in southwest Georgia indicates that elections are racially polarized and that the reductions in the black voting age populations in each of these Districts to 51 percent and below all but eliminate the minority electoral opportunities that currently exist in these districts.

With regard to Districts 158 and 159, the State contends that these changes are justified by a variety of reasons, including removing Mitchell County from District 158, removing Sumter County from District 159, reconfiguring adjoining District 137, and reducing the number of split precincts in this area. We recognize that the current configuration of Districts 158 and 159 resulted largely from the State's response to the Section 5 objections interposed in 1992. It is clear, however, that the proposed plan reduces the opportunities for black voters far more than would be necessary to cure any constitutional problem that might exist in these districts. The redistricting plan adopted by the State in 1991, before any Section 5 objection was interposed, created District 159 as a majority-black district that provided significantly more minority electoral opportunities than do either Districts 158 or 159 in the proposed plan. It is

clear that there are a variety of districting configurations in this area that would comport with the State's apparent redistricting principles and do significantly less damage to minority voting strength; thus, the extent of the retrogression in these Districts is not justified.

With regard to Districts 178 and 179, the State contends that these changes are justified primarily by a desire to eliminate the split in Brooks County (District 178) and reduce the number of split precincts in this area. While these may be legitimate redistricting concerns in some contexts, they do not appear to rise to the level of constitutional necessities, particularly in view of the fact that, in 1991, Districts 178 and 179 were drawn in essentially their current configurations by the local white incumbent legislators, well before any Section 5 objections were interposed. District 178 is not particularly oddly shaped in comparison to nearby majority-white districts, and, even if the split of Brooks County posed some constitutional concern, that county clearly could be reunified without redrawing the entire District and reducing the black population in the District by 35 percentage points. Proposed District 179 eliminates minority voters' opportunity to elect a candidate of choice by reducing the black voting age population by more than 25 percentage points, yet proposed District 179 continues to split three counties and three cities. Our investigation shows that it was not necessary to reduce the black population in this District so dramatically in order to better adhere to precinct boundaries. The lack of any additional explanation indicates that the State's predominant motive in making the proposed changes to District 179 may have been simply to draw a majority-white district. Under these circumstances, the desire to correct perceived constitutional violations in current Districts 178 and 179 does not provide adequate justification for the extreme retrogression in the proposed Districts.

Thus, in the areas and Districts described, the proposed House and Senate plans would "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise" that is not required to bring the current Georgia House and Senate districting plans into compliance with the Equal Protection clause of the United States Constitution. Beer v. United States, 425 U.S. at 141.

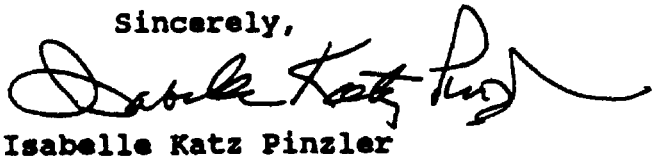
As noted above, the State of Georgia has the burden under Section 5 of the Voting Rights Act to show that a submitted change has neither a discriminatory purpose nor a discriminatory

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, 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 1995 Georgia State House and Senate Redistricting Plans.

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 proposed 1995 State House and Senate redistricting plans continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Georgia plans to take concerning this matter. If you have any questions, you should call Deanne E. B. Ross (202-514-6331), an attorney in the Voting Section.

Sincerely,



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