U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 23, 1990

Cynthia Young Rougeou, Esq.
Assistant Attorney General
P.O. Box 94125
Baton Rouge, Louisiana 70804-9125

Charles L. Hamaker, Esq.
City Attorney
P.O. Box 123
Monroe, Louisiana 71210-0123

Dear Ms. Rougeou and Mr. Hamaker:

This refers to Act No. 393, H.B. No. 945 (1977), which provides for an second judgeship and the adoption of numbered positions (Divisions A and B); Act No. 8, S.B. No. 345 (1990), insofar as it provides for a third judgeship, elected from a numbered position (Division C), the provision that a judge may not practice law, and the implementation schedule; Act No. 728, H.B. No. 2047 (1990), which also provides for a third judgeship and, in addition, provides for a change in method of election from at large to two single-member districts and one at large, a districting plan, the implementation schedule, and the provision that a judge may not practice law; and three annexations for the Monroe City Court in Ouachita Parish, Louisiana, 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 the information to complete your submissions on August 24, 1990.

We have considered carefully the information you have provided, as well as comments and information from other interested parties. At the outset, we note that as of November 1, 1964, the Section 5 coverage date, the Monroe City Court electorate included the residents of Wards 3 and

10 in Ouachita Parish, and the City Court had one elected judge. According to the 1980 Census, this electorate was 48.4 percent black in population. All changes adopted since November 1, 1964, are now before the Attorney General for preclearance. In sum, it is proposed that the Court have three judges elected at large with numbered positions, and under the state's open primary system, they also are to be elected by majority vote. The geographic jurisdiction of the Court is to be expanded by adding Wards 1, 2, and 4, which would reduce the black population percentage, from 48.4 percent to 39.2 percent, using 1980 Census data. Act No. 728 (1990) also provides for a change to a system of two districts and one at-large position; however, this proposed method of election will become effective only "[i]f the federal courts finally determine that the present method of electing Louisiana trial judges violates Section 2 of the Voting Rights Act of 1965 and requires the subdistricting of such courts as a remedy."

With regard to the annexations, we begin with the proposition that where a jurisdiction seeks to expand its electorate in a manner that significantly reduces black voting strength, Section 5 preclearance may not be granted unless the jurisdiction has obviated the retrogressive effect by adopting an election system "which would afford [black voters] representation reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, 422 U.S. 358, 370 (1975). Our review indicates that the at-large election system for the City Court does not provide black voters with an equal opportunity to participate effectively in the political process and to elect candidates of their choice to the City Court. In particular, City Court elections appear to be characterized by a pattern of racially polarized voting, and there would seem to be a variety of readily discernible alternative election schemes (including, but not limited to, a fairly drawn plan of single-member districts) which would afford black voters a more realistic opportunity to participate in City Court elections and to elect candidates of their choice to these offices.

In that regard, we note that while Ward 4 had been eligible to be added to the City Court jurisdiction since at least 1970, there appears to have been little or no interest in implementing this change until immediately prior to the

1984 City Court primary election, which we understand was marked by the presence of the first black candidate for the City Court. We further understand that prior to that election there was an effort to add Wards 1 and 2 as well.

The two additional City Court judgeships, then, were established in the context of an election system that does not give black voters an equal opportunity to participate in the political process and to elect candidates of their choice to the City Court. Furthermore, the adoption and use of designated positions and a majority vote requirement enhances the discriminatory nature of the election system utilized for filling positions on the City Court and their use, in the context of the racial bloc voting which seems to exist, in our view results in a clear violation of Section 2 of the Voting Rights Act. In addition, with respect to the third judgeship, it appears that it was established as an at-large position over the protest of black leaders and with the knowledge that the district court in Clark v. Edwards, 724 F. Supp. 294 (M.D. La. 1988), already had found (relying in part on the presence of racially polarized voting in the 1984 City Court contest) that voting is racially polarized in both the district court judicial district and the court of appeals district in which the Monroe City Court is located.

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); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, our quidelines provide that a submitted change may not be precleared if its implementation would lead to a clear violation of Section 2 of the Act. See 28 C.F.R. 51.55. Because we cannot conclude, as we must under the Voting Rights Act, that your burden has been sustained in this instance, and because our view is that use of the at-large election system with designated posts and majority vote results in a clear violation of Section 2, I must, on behalf of the Attorney General, interpose an objection to the changes occasioned by Act No. 393, Act No. 8 and Act No. 728 relative to the third judgeship position, and the three annexations to the Monroe City Court system.

In reaching this decision, we are not unmindful of the recent decision of the Fifth Circuit Court of Appeals in League of United Latin American Citizens v. Clements, No. 90-8014 (Sept. 28, 1990) ("LULAC") (en banc) which held that the Section 2 results standard is not applicable to judicial elections. The LULAC court, however, expressly recognized that "Section 5 of the Act applies to state judicial elections" (Slip op. at 20) and until this matter is clarified further by the courts we see no basis for altering our Section 5 procedural requirements insofar as they relate to Section 2.

With respect to the election method change and districting plan contained in Act No. 728 (1990), it appears that these changes are not capable of implementation at the present time. Also the implementation schedules provided in Act Nos. 8 and 728 (1990) are moot in the current circumstances. Accordingly, no determination is necessary or appropriate with respect to these changes. 28 C.F.R. 51.35.

Lastly, the Attorney General does not interpose any objection to the change in qualifications for serving as a City Court judge. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. 28 C.F.R. 51.41.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the changes to which we have objected do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objections. However, until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the two additional judgeships, the adoption of designated positions, and the three annexations to the court system continue to be legally unenforceable.

Because this matter is pending before the court in Hunter v. City of Monroe, C.A. No. 90-2031 (W.D. La.), we are sending a copy of this letter to the court and counsel of record in that case.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Jacques L. Wiener, Jr.
United States Circuit Judge

Honorable Tom Stagg
Chief United States District Judge

Honorable Donald E. Walter
United States District Judge

Honorable John Larry Lolley
Monroe City Court Judge

Benjamin Jones, Esq.
Jones & Smith

Roy A. Mongrue, Jr., Esq.
Assistant Attorney General

E. Roland Charles, Esq.

George Carso, Esq.
Carso & Noel

Bennie Mac Farrar, Esq.

Robert G. Pugh, Esq.
Pugh & Pugh

Catherine L. Stagg, Esq.

Mr. Larry Jefferson

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

August 31, 1993

Angie R. LaPlace, Esq.
Assistant Attorney General
State of Louisiana
P.O. Box 94125
Baton Rouge, Louisiana 70804-9125

Dear Ms. LaPlace:

This refers to Act No. 644 (1993), which provides for three judges, a change in method of election from at large to two single-member districts (Divisions B and C) and one at-large position (Division A), the districting plan, and the candidate qualifications for district candidates for the Monroe City Court in Ouachita Parish, Louisiana, 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 submission on July 2, 1993; supplemental information was received on August 9, 1993.

This also refers to your request that the Attorney General reconsider and withdraw the Section 5 objections interposed on October 23, 1990, and March 22, 1993, to the following changes affecting the Monroe City Court: Act No. 393 (1977), insofar as it provided for a second judgeship elected at large from a designated position; Act No. 8 (1990), insofar as it provided for a third judgeship elected at large from a designated position; Act No. 728 (1990), insofar as it provided for a third judgeship; and Act No. 682 (1992), insofar as it provided for three judgeships elected at large from designated positions. We received your request on July 12, 1993.

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); see also 28 C.F.R. 51.52. In addition, a submitted change may not be

precleared if its implementation would lead to a clear violation of Section 2 of the Voting Rights Act. See 28 C.F.R. 51.55. An objection shall be withdrawn where the jurisdiction demonstrates that the submitted change satisfies the standards for preclearance. See 28 C.F.R. 51.48.

We have carefully considered the information you have provided, as well as information from other interested parties. The Monroe City Court electorate consists of parish Wards 3 and 10, as well as uninhabited portions of Wards 1 and 2 presently within the City of Monroe. According to the 1990 Census, Wards 3 and 10 have a total population of 66,731, of whom 57 percent are black. As of January 1993, blacks comprise 51 percent of the registered voters in these two wards. The submitted 1993 legislation provides for one judge to be elected at large, one to be elected from Ward 3 (80% black), and one to be elected from Ward 10 (37% black).

Our analysis indicates that this election system will allow black voters an equal opportunity to elect candidates of their choice as City Court judges. Accordingly, the Attorney General does not interpose any objection to the changes occasioned by Act No. 644 (1993) and, because the concerns we previously entertained with regard to the creation of the second and third judgeships have been addressed, the objections interposed to the creation of those judgeships (pursuant to Act Nos. 393, 8, 728, and 682) are withdrawn. With regard to all of these submitted changes, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See 28 C.F.R. 51.41.

Finally, as noted above, it appears that you also have requested reconsideration of the objections insofar as they applied to the adoption of designated positions for the at-large election of the second and third judgeships. It is not clear why this request has been made since the state will not now seek to implement those changes in future elections. In any event, because the state has not provided any factual or legal basis for us to reach a different conclusion regarding these voting changes, the request for withdrawal must be denied in this respect.

Because we understand that this matter is still pending before the court in Hunter v. City of Monroe, No. 90-2031 (W.D. La.), we are sending a copy of this letter to the three-judge court and counsel of record in that case.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Jacques L. Wiener, Jr.
United States Circuit Judge

Honorable Tom Stagg
Chief United States District Judge

Honorable Donald E. Walter
United States District Judge

Counsel of Record