which was significantly underpopulated according to the 2000 Census, into proposed District 4, which was overpopulated in the 1992 plan, and which is over 80 percent white. Accordingly, we are not persuaded by the county's contention that, if one is to honor the redistricting criteria used by the county, a reduction in minority voting strength in District 1 was necessary to preserve the minority voting strength in District 2.

Under the Voting Rights Act, a jurisdiction seeking to implement proposed changes affecting voting, such as a redistricting plans, must establish that, in comparison with the status quo, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." See Beer v. United States, 425 U.S. 130, 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, 77 (D.D.C. 2002). In addition, the jurisdiction must establish that the change was not adopted with an intent to retrogress. Reno v. Bossier Parish School Board, 528 U.S. 320, 340 (2000). Finally, the submitting authority has the burden of demonstrating that the proposed change has neither the prohibited purpose nor effect. Id. at 328; see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

In light of the consideration discussed above, I cannot conclude that your burden of showing that these submitted changes do not have a discriminatory effect has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted 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 neither have 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 However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable.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 realignment and renumbering of voting precincts, the polling place changes, the elimination

and renaming of polling places, and the temporary additional early voting locations and their hours because those changes are dependent upon the objected-to redistricting plan.

Further, in our letter of July 19, 2002, we informed you that, under the Voting Rights Act, changes, such as the county's proposed redistricting plans, are not legally enforceable until the jurisdiction has obtained Section 5 preclearance for those changes. Clark v. Roemer, 500 U.S. 646 (1991). However, it is our understanding that on August 20, 2002, Putnam County is scheduled to conduct a primary election under the proposed plan, for two seats on the Board of Education. Please inform us of the action Putnam County plans to take regarding both the objection interposed by this letter as well as the upcoming August 20 primary election.

If you have any questions on these matters, you should call Mr. David Becker (202-514-3090), an attorney in the Voting Section. Refer to File Nos. 2002-2987 and 2002-2988 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

J. Michael Wiggins
Acting, Assistant Attorney
General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

September 23, 2002

Al Grieshaber, Jr., Esquire
City Attorney
Post Office Box 447
Albany, Georgia 31702-0447

Dear Mr. Grieshaber:

This refers to the 2001 redistricting plan for the City of Albany in Dougherty County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our September 10, 2001, request for additional information on July 23, 2002.

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the city's previous submissions. As discussed further below, I cannot conclude that the city's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 redistricting plan for the city board of commissioners.

According to the 2000 Census, the City of Albany in Dougherty County, Georgia, has a total population of 76,939, of whom 49,770 (64.7%)are black. Of the 55,516 persons of voting age, 33,420 (60.2%) are black. As of September 1, 2002, there were 32,302 registered voters in the city, of whom 18,498 (57.3%) were black. Since the 1980 Census, the city's black population percentage has consistently increased. Between 1980 and 1990, it increased from 47.6 to 54.8 percent and in 2000 it reached 64.7 percent. Since 1990, the total population in the city has decreased.

Our analysis reveals that the black population in Ward 4 has steadily increased over the past two decades and that this trend is likely to continue. The ward's black population increased from 20 percent in 1980, to 40 percent in 1990. When the city redistricted after the 1990 Census, it reduced the black population in Ward 4 to 30 percent. The 2000 Census reveals that the black population in the ward had once again increased significantly, this time to nearly 51 percent, only to be reduced again in the plan proposed by the city to 31 percent in order to forestall creation of a black district.

We have carefully examined the circumstances surrounding the decision to reduce the percentage of the black population in Ward 4 under the proposed plan. Our analysis indicates that the city has not carried its burden of showing that its proposed plan was not designed with the intent to limit and retrogress the increased black voting strength in Ward 4.

The starting point of our analysis concerning whether the plan was motivated by an intent to retrogress is Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977).[1] Following the framework presented in that case, the evidence implies an intent to continue the city's practice of ensuring that two majority white wards are maintained in the city, despite the major increase in black population in Ward 4 to a level over 50 percent black. First, the historical background of past redistricting indicates an intent to maintain Ward 4 as a district that remains at the a level of 70 percent white, thus eliminating any ability of black voters to elect a candidate of choice in this district. The 1991 redistricting was undertaken after Ward 4 had incurred a major increase from about 20 to 40 percent black over the 1980's. The plan drawn then reduced the black population to 30 percent. Now, after the black population of Ward 4 has increased from 30 to almost 51 percent

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[1] There, the Supreme Court identified the analytical structure for determining whether racially discriminatory intent exists. This approach requires an inquiry into: 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.

in the last ten years, the city seeks to draw a plan which again reduces the population to 30 percent black.

Second, we note that one of the city's explicit redistricting criteria was to "maintain ethnic ratios (four majority black districts)." Exhibit C to your July 19, 2002, letter. The proposed plan does maintain four black districts, but implicit in that criterion is an intent to limit black political strength in the city to no more than four districts, even though Ward 4 had become majority black and demographic trends indicate that its strength will continue to increase in the future. The use of such a criterion under these circumstances implies that the proposed plan was designed with the purpose to limit and retrogress the increased black voting strength in Ward 4, as well as in the city as whole.

Third, there is no necessity for such a reduction in Ward 4. The city accomplished this result by moving the black population from Ward 4 into Ward 6, a district which is already 90 percent black. The justification for such a major change is unclear, since Ward 4 was not malapportioned. Also of significance is that there are a number of black persons who are interested in running for the board of commissioners within the area removed from benchmark Ward 4.

The reasons offered by the city for the reductions in the black population in Ward 4 do not withstand scrutiny. The city claims that the reductions are simply the result of population shifts from the south of the city to the northwest, as the result of natural disasters. The city asserts that as the population has become more mobile, the majority of new construction has taken place in the northwest corner of the city, replacing the housing units in the south city, and that the attractiveness of nearby shopping, restaurants, and other facilities has drawn the populace out of the center of the city.

These assertions do not account for the reduction in the black population in Ward 4. Under the benchmark plan, Ward 4 was not malapportioned and required no adjustment. Rather, other demographic changes experienced by the city account for the steady increase in the black population in Ward 4. For example, there has been long-term white flight from the city, a shift of black population into the city from poorer rural areas, and the movement of black population from flood-stricken Wards 3 and 6 into other wards, including Ward 4.

Our review of the benchmark and proposed plans, as well as alternative plans considered by the city, indicates that the reduction in the black population percentage in Ward 4 was neither inevitable nor required by any constitutional or legal imperative. Alternative redistricting approaches available to the city avoided reducing black voting strength in Ward 4 below the benchmark plan levels, while adhering substantially to the city's redistricting criteria as described in your submission. These facts indicate that the city has fallen short of demonstrating that the change in Ward 4 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); 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 city's 2001 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 submitted change 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 Albany plans to take concerning this matter. If you have any questions, you should call Mr. Robert Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

J. Michael Wiggins
Acting Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 15 2002

Wayne Jernigan, Esq.
P.O. Box 422
Buena Vista, Georgia 31803

Phillip L. Hartley, Esq.
Cory O. Kirby, Esq.
Harben & Hartley
340 Jesse Jewell Parkway
Gainesville, Georgia 30503

Dear Messrs. Jernigan, Hartley & Kirby:

This refers to Act No. 435 (2002), which provides the redistricting plan for the Marion County School District in Marion County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our July 1, 2002, request for additional information on August 16, 2002; supplemental information was received through October 1, 2002.

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the school district's previous submissions. As discussed further below, I cannot conclude that the school district's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the school district's 2002 redistricting plan.

The school district is governed by a five-member board. Voters elect five school board members to four-year, staggered terms from single-member districts. This method of electing the board of education was adopted in 1986 and received Section 5 preclearance that year. The districting plan adopted at that time serves as the benchmark to evaluate whether the 2002 plan withstands scrutiny under Section 5.

According to the 2000 Census, the Marion County School District, coterminous with Marion County, Georgia, has a total

population of 7,144, of whom 2,425 (33.9%) are black persons. The voting age population is 5,119, of whom 1,617 (31.6%) are black persons. As of September 9, 2002, there were 3,863 active registered voters, of whom 1,302 (33.7%) were black. The 2000 Census indicates that there are three districts under the benchmark plan, Districts 1, 4, and 5, in which black persons are a majority of the voting age population: District 1 has a black voting age population of 60.1 percent, District 4 has a black voting age population of 57.7 percent, and District 5 has a black voting age population of 55.1 percent. During the past decade, black voters have demonstrated the ability to elect candidates of choice in Districts 1 and 4.

In contrast, the proposed 2002 redistricting plan contains only two districts in which black persons are a majority of the voting age population. District 1 retains a significant black population percentage, District 4 drops to a bare black majority of both the total (52.1%) and the voting age (50.7%) populations, and District 5 is no longer a majority black district as the black voting age population percentage decreases to 36.0 percent.

Our statistical analysis implies that elections in Marion County are marked by a pattern of racially polarized voting, in which white and black voters do not usually provide significant support to candidates supported by the other community. Within the context of such electoral behavior, the significant reduction in black voting strength in District 4 would necessarily entail a material reduction in the ability of black voters to elect candidates of choice under the proposed plan.

We recognize that the benchmark plan is severely malapportioned, with Districts 1, 4, and 5 being the most underpopulated, and that the black population percentage, on a county-wide basis, has dropped seven points. Accordingly, our analysis establishes that it is not possible to remedy the existing malapportionment and still retain three black population majority districts. While the loss of a third district that is majority black in population appears to be unavoidable, the loss of a second district in which the black voters can elect candidates of choice is not.

Although the plan drops the number of viable minority districts by one, the school board contends that this was necessary as a result of the confluence of the malapportionment and the drop in the county's black population from 1990, which made the result inevitable. If a retrogressive redistricting plan is submitted, the jurisdiction seeking preclearance of such a plan bears the burden of demonstrating that a less-

retrogressive plan cannot reasonably be drawn. Supplemental Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5411 (Jan. 18, 2001). Where the jurisdiction asserts that a non-retrogressive plan is not possible in light of one-person, one vote guarantees or other constitutional limitations, we look to see if an non-retrogressive alternative is feasible and, in certain instances, may develop illustrative plans as part of our analysis. Id. at 5413.

Here, our analysis, which included the preparation of such an illustrative plan, establishes that the significant reduction in the black voting age population percentage in District 4, and the likely resulting retrogressive effect on the ability of black voters to elect a candidate of choice to two seats on the board, was neither inevitable nor required by any constitutional or legal imperative. Illustrative plans demonstrate that it is possible to maintain the black voting age population in District 1 without causing a retrogressive effect and still meet the school district's stated redistricting criteria.

The ability to devise a plan that does not eliminate a second district in which black voters can continue to elect candidates of their choice and also complies with traditional redistricting principles establishes that the reductions in black voting strength resulting from implementation of the proposed plan were not unavoidable. Accordingly, the school district has failed to meet its burden of demonstrating that the proposed plan does not have a retrogressive effect.

Under Section 5 of the Voting Rights Act, a jurisdiction seeking to implement proposed changes affecting voting, such as a redistricting plan, must establish that, in comparison with the status quo, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." See Beer v. United States, 425 U.S. 130, 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, 77 (D.D.C. 2002).

In light of the considerations discussed above, I cannot conclude that your burden of showing that the submitted change does not have a discriminatory effect 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 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. 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 changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

If you have questions on these matters, you should call Ms. Maureen Riordan (202-353-2087), an attorney in the Voting Section. Refer to file No. 2002-2643 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

SEP 12 2006

Tommy Coleman, Esq.
Hodges, Erwin, Hedrick & Coleman
P.O. Box 2320
507 North Jefferson Street
Albany, Georgia 31703-2320

Dear Mr. Coleman:

This refers to the change in voter registration and candidate eligibility regarding the proposed reassignment of Board of Education Chair Henry Cook from District No. 5 to District No. 4 in Randolph County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on July 14, 2006, and supplemental information through August 23, 2006.

We have carefully considered the information you have provided, as well as information and materials from other interested parties. Under Section 5 of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 ("Voting Rights Act"), the Attorney General must determine whether the submitting authority has met its burden of showing 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. As discussed further below, we cannot conclude that the County has sustained its burden of showing that the proposed change does not have a discriminatory purpose. Therefore, based on the information available to us, we are compelled to object to the proposed reassignment on behalf of the Attorney General.

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 Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.52). In *Village of Arlington Heights v. Metropolitan Housing Authority*, 429 U.S. 252, 256-57 (1977), the Supreme Court identified a non-exhaustive list of factors that may serve as indicia of a discriminatory purpose. Those factors include the following: (1) the impact of the official action and whether it bears more heavily on one race than another; (2) the historical background of the action; (3) the sequence of events leading up to the action; (4) whether the challenged decision departs, either procedurally or substantively, from the normal practice; and (5) contemporary statements and viewpoints held by the decision-makers.

In analyzing the available information in light of *Arlington Heights*, we conclude that sufficient factors are present to prevent the County from meeting its burden of proving the absence of a discriminatory purpose. In the first place, the sequence of events here is highly unusual. The boundaries of districts for electing members of the Randolph County Board of Education were redrawn following the 2000 Census. An issue arose as to which district the Board Chairperson, Henry Cook, resided. Mr. Cook, who is black, is a "liner," in that his property is divided between Districts 4 and 5. During our Section 5 review of the redistricting, the County formally determined – and advised this Department – that Mr. Cook was an eligible voter and candidate for office in District 5, the district which he has long represented on the school board. On August 1, 2002, Mr. Cook received a new voter registration card that retained him in District 5.

The same issue arose again in a 2002 lawsuit. In that action, Judge Gary C. McCorvey of the Superior Court of Tift County heard evidence in an adversarial hearing, considered the law, and ruled that Mr. Cook was eligible to vote and run for office in District 5:

> [F]or purposes of running for election to the Board of Education from "new" district five as enacted by the General Assembly of the State of Georgia and as approved by the Department of Justice of the United States of America, the residence of Henry L. Cook is within the boundaries of such "new" district five as contemplated by the Laws and Constitutions of both the State of Georgia and the United States of America.

In re: Henry L. Cook, Candidate for Board of Education for the County of Randolph, Decision of Gary C. McCorvey, Chief Judge, Superior Courts, Tifton Judicial Circuit, Sitting by Designation as Superintendent of Elections, Randolph County, Georgia, slip op. (Oct. 28, 2002) at 7 ¶ 22. An appeal to the Randolph County Superior Court was dismissed as moot. *Jordan v. Cook*, 277 Ga. 155, 587 S.E.2d 52 (2003). The dismissal was affirmed by the Georgia Supreme Court. *Id.* The election was duly held and the candidate supported by the voters won.

Notwithstanding these court decisions, and despite the lack of any change in relevant facts or law, in January 2006 the three-member Randolph County Board of Registrars met in a special meeting called for the sole purpose of determining anew the proper voter registration location of Mr. Cook and his family members living at his address. Neither Mr. Cook nor his family were specifically notified of the meeting or invited to present evidence on their own behalf. The Board of Registrars, all of whose members were white, voted unanimously to change the voter registration status of Mr. Cook and his family members from District 5, where over 70 percent of the voters are African American, to District 4, where over 70 percent of the voters are white.

This sequence of events is procedurally and substantively unusual. The Board resurrected the issue of Mr. Cook's residency after it had been settled for three years, without any intervening change in fact or law, and without notifying Mr. Cook that it was doing so. Moreover, it is particularly unusual for officials with no legal training to overturn, in effect, a decision by a judge in order to disturb an incumbent officeholder.

In addition, the Board's contemporaneous statements undermine their purported reasons for seeking to reassign Mr. Cook. One of the stated bases for the Board's decision was the purported fact that all neighbors who surround Mr. Cook's residence are in District 4, although the Board has since acknowledged that Mr. Cook's District 4 neighbors do not in fact encircle his house. Another stated basis for the Board's decision was to prevent a "liner" from voting in any district where he owns property or from voting in multiple districts at the same time. The Board presented no evidence indicating that any "liner" has attempted to change his registration status or vote in multiple districts, and certainly nothing in Judge McCorvey's decision warrants an interpretation that multiple voting is permissible.

For these reasons, and in light of the history of discrimination in voting in the County, we cannot conclude that the County has sustained its burden of showing that the submitted change lacks a discriminatory purpose. Therefore, on behalf of the Attorney General, we must object to the change in voter registration and candidate eligibility regarding the proposed reassignment of Board of Education Chair Henry Cook from District No. 5 to District No. 4 in Randolph County, Georgia.

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 neither have 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 Court for the District of Columbia is obtained, the change in voter registration and candidate eligibility regarding the proposed reassignment of Board of Education Chair Henry Cook from District No. 5 to District No. 4 in Randolph County, Georgia will continue 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 Randolph County plans to take concerning this matter. If you have any questions, please call Maureen Riordan (202-353-2087), an attorney in the Voting Section.

Sincerely,

Wan J. Kim
Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

May 29, 2009

The Honorable Thurbert E. Baker
Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300

Dear Attorney General Baker:

This refers to the establishment of the voter verification program for voter registration application data, including citizenship status, and changes to the voter registration application for the State of Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. We received your response to our December 15, 2008 request for additional information on March 30, 2009; supplemental information was received on April 2, 2009.

We turn first to the verification program for voter registration application data contained in Submission 2008-5243. Changes to the voter registration process constitute a voting change under Section 5. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. § 51.13(b); Morales v. Handel, Civil Action No. 1:08-CV-3172-JTC (N.D. Ga. Oct. 27, 2008). As such, the submitting authority has the burden of establishing that a proposed change does not have a retrogressive effect on the ability of minority voters to participate in the political process and to elect candidates of choice, nor a discriminatory purpose. Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. § 51.52. The voting change at issue must be measured against the benchmark practice to determine whether the opportunities of minority voters to participate in the political process and elect candidates of their choice will be "augmented, diminished, or not affected by the change affecting voting." Beer v. United States, 425 U.S. 130, 141 (1976).

We have carefully considered the information you have provided, as well as information from other interested parties. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing 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. As discussed further below, I cannot conclude that the state has sustained its burden in this instance. Therefore, based on the information available to us, I must object to the voter verification program, on behalf of the Attorney General.

Under the benchmark system, all applicants swear or affirm, under penalty of law, on a voter registration application form that the information they are providing, including their citizenship status, is true. No further information is statutorily required. Under normal circumstances, registering to vote in Georgia is a single action, which can be accomplished at the applicant's convenience. Challenges to an individual's eligibility on any basis, including citizenship, happen infrequently under the benchmark system, by the state's own admission. Under the benchmark system, the state has indicated that there is no program for automated verification of information contained on voter registration applications.

The proposed verification system seeks to match the information provided by the applicant with the information maintained by the state's Department of Driver Services [DDS] and, in many cases, the federal Social Security Administration [SSA], and provides a list of those persons whose information does not match to local registrars for further inquiry. As an initial matter, we address the state's claim that it adopted the submitted verification system as part of its program for implementation of the minimum requirements for elections for federal office contained in the Help America Vote Act of 2002, 42 U.S.C. § 15301 et seq. Specifically, the state has indicated that the verification program was adopted to implement the requirements of Section 303(a)(5) of HAVA, after the state lost a private lawsuit challenging the state's previous full social security number requirement for voter registration.

A brief recap of the relevant HAVA requirements is in order. As part of the requirement that states create a computerized statewide voter registration database for elections for federal office, HAVA provides that, for a state that does not require a full social security number, it cannot accept or process an application for voter registration unless the applicant provides a driver license number or, where the applicant does not have such a number, the last four digits of the applicant's social security number. In the absence of either number, HAVA requires a state to issue the applicant a unique identification number. 42 U.S.C. § 15483(a)(5)(A)(i) and (ii). Consistent with this requirement, HAVA next provides for the attempted verification of these types of numbers and accompanying identification information, such as name and date of birth, through the use of either the state driver license agency database or, as necessary, the SSA database. 42 U.S.C. § 15483(a)(5)(B). Finally, HAVA leaves it up to the state as to whether the information provided by an applicant is sufficient to meet HAVA's requirements, in accordance with state law. 42 U.S.C. § 15483(a)(5)(A)(iii). Thus, these HAVA requirements are directed at identification, not eligibility. See Florida State Conf. of the NAACP v. Browning, 522 F.3d 1153, 1168 (11th Cir. 2008). HAVA does not speak to the question of whether a state should deem an applicant eligible or ineligible, whose information fails to match on some element contained in a state or federal database. Indeed, HAVA takes no position concerning verification of citizenship, neither requiring nor prohibiting state action to verify the citizenship of voter registration applicants. Likewise, HAVA explicitly grants the state discretion in how it implements its requirements, see, e.g., 42 U.S.C. §§ 15484-15485. Such discretion on the part of state officials is the touchstone for coverage under Section 5. Young v. Fordice, 520 U.S. 273 (1997).

We now proceed to discuss the substance of the state's verification program. The results of the verification matching process described above are contained in two reports generated by the state for local registrars: the R1 and R2. The R1 report, which attempts to verify information other than citizenship, results from a data comparison that we agree with the state is required by HAVA; the issue is what the state in its discretion chooses to do with that information. The R2 report, which seeks to verify citizenship status, results from a data comparison that is discretionary on the state's part. The state has informed us that it intends to utilize the information concerning non-matches set forth in these reports in the following way:

> The R1 report lists non-matched registrants for the following criteria: first name, last name, date of birth, driver's license number and last four digits of a social security number. A failure to match in any of those categories [on the R1], pursuant to the HAVA verification process, means that the applicant has not been verified as required by HAVA and they are not considered a registered voter at that point in time.
>
> Failures to verify or match on the criteria of citizenship are listed on the R2 report. The failure to match on this criterion is treated in the same way failures to match on other criteria listed above.
>
> In all instances, a failure to verify registration then triggers further inquiry by the county registrars to resolve any questions in order to verify the registration and move the applicant onto the registration list.

Letter of March 24, 2009, at 20-21. Thus, "non-matched registrants," who have submitted registration applications or changes to their existing registration, must take further steps to establish their voting eligibility. Under the state's proposed procedures, pursuant to state law, local election officials can require these individuals also to appear at the county courthouse or office building, not at the voter's convenience, but rather on a week day, during normal business hours and, pursuant to state law, with only three days notice. O.C.G.A. § 21-2-228.

Because the state implemented these changes in violation of Section 5, see Morales, supra, we have the actual results of the state's verification process. As of March 13, 2009, a total of 199,606 individuals are flagged as a "non-match based on any criteria" on the R1 report. Since its inception, the R2 report has flagged 7,007 individuals as potential non-citizens. Under the state's proposed procedures all of the individuals flagged would have to take further, inconvenient steps to be considered registered voters.

We have considered the accuracy of the state's verification process. Our analysis shows that the state's process does not produce accurate and reliable information and that thousands of citizens who are in fact eligible to vote under Georgia law have been flagged. As an example, recent deposition testimony by state employees in the Morales litigation indicates that an error as simple as transposition of one digit of a driver license number can lead to an erroneous notation of a non-match across all compared fields. In addition, the state's response to the Department's

October 2008 inquiry concerning the state's use of the SSA HAVV system indicates error-laden and possibly improper use of the system, thereby increasing the potential for unreliable results. The R2 report has flagged a large number of persons who have subsequently demonstrated that they are in fact citizens. Indeed, of the 7,007 individuals who have been flagged on the R2 report as potential non-citizens, more than half were in fact citizens. Perhaps the most telling statistic concerns the effect of the verification process on native-born citizens. Of those persons erroneously identified as non-citizens, 14.9 percent, more than one in seven, established eligibility with a birth certificate, showing they were born in this country. Another 45.7 percent provided proof that they were naturalized citizens, suggesting that the driver's license data base is not current for recently naturalized citizens.

The impact of these errors falls disproportionately on minority voters. Although the state has not provided data on the racial and language minority characteristics of all registrants whose applications went through the verification process, we have been able to compare the composition of those persons whom the state has flagged for further inquiry because of a non-match with both the composition of newly-registered voters in the state and the composition of existing registered voters. Under either comparison, applicants who are Hispanic, Asian or African American are more likely than white applicants, to statistically significant degrees, to be flagged for additional scrutiny.

African Americans comprise a majority of the registrants flagged by the R1 report. Whether one compares the over-representation of African Americans on the R1 with the number of new registrants between May 2008 and March 2009 or with the number of the state's registered voters as a whole, the different rate at which African American applicants are required to undertake an additional step before becoming eligible voters is statistically significant. The effect demonstrated by the R2 report is similarly dramatic. Although African American and white voters represent approximately equal shares of the new voter registrants between May 2008 and March 2009, more than sixty percent more African Americans voters who registered during this period are currently flagged than are whites. Again, this rate is statistically significant. Similar disproportion arises with regard to flagged Asians and Hispanics on the R2 report. Hispanic and Asian individuals are more than twice as likely to appear on the list as are white applicants. Each of the differences is statistically significant.

In sum, the state's proposed procedures for verifying voter registration information are seriously flawed. This flawed system frequently subjects a disproportionate number of African-American, Asian, and/or Hispanic voters to additional and, more importantly, erroneous burdens on the right to register to vote. These burdens are real, are substantial, and are retrogressive for minority voters. As such, an objection based upon the state's failure to establish the absence of a discriminatory effect is warranted.

In making this determination, we note that Section 5 does not prohibit a state from taking steps to ensure that only qualified individuals are registered to vote. The state must ensure that the discretionary manner in which it does so is not discriminatory. Common Cause v. Billups, 504 F. Supp. 2d 1333, 1377 (N.D. Ga. 2007), aff'd, 554 F.3d 1340 (11th Cir. 2009). In Billups,

the absence of a disparate racial effect permitted Georgia to require voters to present appropriate photographic identification as a prerequisite to voting. In Crawford v. Marion County Election Board, --- U.S. ---, 128 S.Ct. 1610 (2008), the Supreme Court rejected a facial challenge to Indiana's voter identification law. Notably, the decisions in both Crawford and Common Cause resulted from a record totally devoid of evidence of a discriminatory effect flowing from the regulations at issue. Crawford, at 1622-23; Common Cause, at 1378. That discriminatory effect, however, is present here.

Based upon our extensive review of the available information, and our extensive discussions with the state, we believe there are alternatives available to the state that could mitigate or eliminate the identified discriminatory impact of the changes at issue without affecting adversely the state's asserted goal of preventing voter fraud. We believe it would be appropriate and desirable to discuss with the state such alternative approaches. We also note that the state has very recently enacted legislation codifying a requirement for documentary proof of citizenship for voter registration, which includes a requirement for the adoption of new regulations implementing such legislation. When submitted for Section 5 review, these changes may affect the analysis of the voter verification program.

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 neither have 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. 28 C.F.R. § 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. § 51.45. However, until the objection is withdrawn or a judgment from the United States District Court for the District of Columbia is obtained, the changes to the state voter information verification program described above will continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. § 51.10.

With regard to the changes to the voter registration application contained in Submission No. 2009-0284, they are related to the state's implementation of the voter information verification program, which is legally unenforceable. Accordingly, it would be inappropriate for the Attorney General to make a determination on those changes at this time. 28 C.F.R. §§ 51.22 and 51.35. We note that the Court in Morales found that the disparate methodologies adopted by the counties may be a change requiring review under Section 5. However, because those methodologies have not been submitted for Section 5 review, it is neither necessary nor appropriate for us to make any determination on them at this time; nor do we, similar to the Court in Morales, make a determination at this time as to whether each of the state's 159 counties must make a separate submission.

Because the Section 5 status of these changes are before the Court in Morales, we are providing a copy of this letter to the Court and counsel of record. To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that the State of Georgia plans to take concerning this matter. If you have any questions concerning this letter, please call Robert S. Berman, a Deputy Chief in the Voting Section, at 202/514-8690.

Sincerely,

Loretta King /AR

Loretta King
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

November 30, 2009

Walter G. Elliott, Esq.
Elliott, Blackburn, Barnes & Gooding
3016 North Patterson Street
Valdosta, Georgia 31602

Dear Mr. Elliott:

This refers to Act No. 247 (HB 756) (2009), insofar as it provides for a redistricting plan and the implementation schedule for the county commission in Lowndes County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our August 21, 2009, request for additional information through November 13, 2009.

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the county's previous submissions. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed changes have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group. *Georgia v. United States*, 411 U.S. 526 (1973). *Procedures for the Administration of Section 5 of the Voting Rights Act,* 28 C.F.R. 51.52 (c). For the reasons discussed below, I cannot conclude that the county's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2009 redistricting plan.

According to the 2000 Census, the county has a total population of 92,115 persons, of whom 31,311 (34.0%) are African American. Of the 67,981 persons of voting age, 21,171 (31.1%) are black persons. According to the American Community Survey, conducted between January 2006 and December 2008, the total population of the county is estimated to be 102,187 of whom 34,120 (33.4%) are black persons.

The county's proposed redistricting plan adds two single-member commissioner districts that overlay the existing commissioner districts and divide the county in half. Proposed District 4 encompasses the eastern part of the county and, based on the 2000 Census, has a total black population of 49.0 percent. The second district covers the western part of the county. It has a total black population of 19.3 percent, also based on 2000 Census data.

Based on our analysis, the county's proposed plan unnecessarily reduces the level of black voting strength in the county and thereby reduces the ability of African Americans to elect their candidates of choice. Currently, African American voters have the ability to elect a candidate of choice in one of the three single-member districts in the county. Under the proposed plan, African Americans will have the ability to elect a candidate of choice in one out of five single-member districts. Thus, the plan, which places black voters in a worse electoral position than under the benchmark plan, is retrogressive.

Moreover, the evidence establishes that this retrogression was avoidable. Several alternatives exist that meet the county's stated criteria and do not have a prohibited retrogressive effect. For example, it is possible to create an illustrative plan that follows the county's 3-2 configuration, but which, unlike the county's proposed plan, creates a second district in which census data show that the African American community would be able to elect a candidate of choice. The most recent data indicate that African Americans constitute 53 percent of the registered voters in this illustrative district. Although the county's contention that the 2000 Census data understate this district's current African American population percentage appears to be correct, it does not alter our conclusion, based on an analysis of voter registration data from October 2009, that the district would not afford black voters the ability to elect candidates of choice to office.

In addition, our analysis of the evidence precludes a determination that the county has met its burden of showing that the proposed plan was not adopted, at least in part, with the purpose of making minority voters worse off.

First, the retrogressive impact of the proposed plan was easily avoidable. The county justifies the proposed plan by stating that a minority commissioner helped develop the plan, the black population in proposed District 4 is the largest racial group in the district, and the proposed plan has a stronger minority population than previously-developed alternative plans. As noted, *supra*, proposed District 4 required only minimal adjustments to create a district in which black voters would have the ability to elect their candidates of choice, resulting in an overall plan that did not retrogress minority voting strength.

In addition, despite the fact that the county's primary redistricting criterion was to maintain or increase minority voting strength, the proposed plan does not meet that goal. In fact, not only does it fail to maintain black voting strength in the county, it has the opposite effect; it decreases it. Thus, the county's proposal deviates from its own redistricting criteria to make minority voters worse off.

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); 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 county's 2009 redistricting plan. Because the implementation schedule is directly related to the validity of the redistricting plan, it would be inappropriate for the Attorney General to make a determination on this related change. 28 C.F.R. 51.35.

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 or color. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 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 change 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 Lowndes County plans to take concerning this matter. If you have any questions, you should call Mr. Robert Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

Thomas E. Perez
Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

APR 13 2012

Mr. Michael S. Green, Esq.
Mr. Patrick O. Dollar, Esq.
Grant & Green, LLC
P.O. Box 60
Royston, Georgia 30662

Mr. Cory O. Kirby, Esq.
Harben, Hartley & Hawkins
340 Jesse Jewell Parkway
Wells Fargo, Georgia 30501

Dear Messrs. Green, Dollar and Kirby:

This refers to the 2011 redistricting plan for Board of Commissioners and for the Board of Education of Greene County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received the response to our request for additional information from the board of commissioners and the board of education on February 13, 2012; additional information was received through March 28, 2012.

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the county's previous submissions. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group. *Georgia* v. *United States*, 411 U.S. 526 (1973); *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965*, 28 C.F.R. 51.52(c). For the reasons discussed below, I cannot conclude that either board's burden under Section 5 has been sustained as to the submitted changes. Therefore, on behalf of the Attorney General, I must object to the changes currently pending before the Department.

According to the 2010 Census, Greene County has a total population of 15,994, of whom 6,135 (38.4%) are black, and a total voting age population of 12,697, of whom 4,358 (34.3%) are black. Since 1990, the county's total population has grown, while its black population percentage has decreased. These changing demographics underlie our analysis of the 2011 redistricting plan.

Both the board of commissioners and the board of education have five members, of whom four are elected from single-member districts and one is elected at-large countywide. Under the benchmark plan, black voters had the ability to elect candidates of choice in two of the single-member districts, Districts 1 and 2. Under the proposed plan, neither District 1, with a black voting age population of 39.6 percent, nor District 2, with a black voting age population of 45.1 percent, are ability-to-elect districts for black voters. The county identifies proposed District 3 as one in which black residents would have the ability to elect candidates of choice. Our analysis has determined otherwise. Although the black percentage of the electorate does increase in proposed District 3, the registered voter data for this proposed district shows that white registered voters will continue to be a majority in the district. In combination with the racially polarized voting that exists in the district, the proposed district will not provide black voters with the requisite ability to elect a candidate of choice. As such, there are no ability-to-elect districts in the proposed plan.

The elimination of both ability-to-elect districts was unnecessary and avoidable. Although there has been a decrease in the black share of the county's population over the past ten years, the ability to draw at least one black ability-to-elect district still existed. In this regard, we note that a redistricting plan that provided one ability-to-elect district out of four districts, and out of five total seats, may not have constituted a prohibited effect under Section 5.

> There may be circumstances in which the jurisdiction asserts that, because of shifts in population or other significant changes since the last redistricting * * *, retrogression is unavoidable. In those circumstances, the submitting jurisdiction seeking preclearance of such a plan bears the burden of demonstrating that a less-retrogressive plan cannot reasonably be drawn.

Guidance Concerning Redistricting Under Section 5 of the Voting Act, 76 Fed. Reg. 7470, 7472 (Feb. 9, 2011). Minority officials presented several such alternative plans. Because some of these plans sought to maintain two ability-to-elect districts, the plans contained districts that may not have been as strong as those that existed in the benchmark plan. They did, however, inform county officials that less retrogressive plans were possible. The county, however, proceeded to endorse, and the legislature proceeded to adopt for the county, a plan that eliminated both ability-to-elect districts, never pausing to determine whether a plan with one ability-to-elect district was acceptable, and voted along racial lines to adopt the proposed plan.

Based on the existence of less retrogressive alternative plans presented during the redistricting process, it is clear that the county has failed to establish the absence of a discriminatory effect, even in the context of the changed demographics. There is sufficient credible evidence that precludes the county from establishing, as it must under Section 5, that the redistricting plan to elect the board of commissioners and board of education will not have a retrogressive effect.

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); 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 county's 2011 redistricting plan for the board of commissioners and the board of education for Greene County.

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. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the United States District Court for the District of Columbia is obtained, the submitted changes continue 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 that Greene County plans to take concerning this matter. If you have any questions, you should contact Robert S. Berman (202/514-8690), a deputy chief in the Voting Section.

Sincerely,

Thomas E. Perez
Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

August 27, 2012

Andrew S. Johnson, Esq.
Arnold, Stafford, & Randolph
P.O. Box 339
Hinesville, Georgia 31310

B. Jay Swindell, Esq.
McCullough & Swindell
P.O. Box 39
Glennville, Georgia 30427

Dear Messrs. Johnson and Swindell:

This refers to Act No. 384 (H.B. 1075) (2012), which provides the redistricting plan for the Board of Education; and Act No. 383 (H.B. 1074) (2012), which provides the redistricting plan for the Board of Commissioners of Long County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your response to our July 2, 2012, request for additional information on July 13, 2012; additional information was received through August 23, 2012.

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information. Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that the proposed changes neither have a discriminatory purpose nor will have a discriminatory effect. *Georgia* v. *United States,* 411 U.S. 526 (1973); *Procedures for the Administration of Section 5of the Voting Rights Act of 1965,* 28 C.F.R. 51.52. As discussed further below, I cannot conclude that the county's burden under Section 5 has been sustained with regard to the proposed redistricting plans. Therefore, on behalf of the Attorney General, I must object to both plans.

According to the 2010 Census, the county has a total population of 14,464 persons, of whom 3,687 (25.5%) are African American. Of the 10,045 persons of voting age, 2,483 (24.7%) are African American. From 2000 to 2010, the county's total population increased by 40.4 percent, with its black population increasing 49.1 percent and its white population increasing 27.1 percent. The total black population increased from 21.6 percent in 1990 to 25.5 percent in 2010. The county's Hispanic population has grown to 12.3 percent.

Long County is governed by a five-member board of commissioners, which elects a chairperson from among its members. The Long County Board of Education, which also consists of five members and elects a chairperson, is the governing body for the school district. The commissioners and school board members are elected by majority vote from five single-member districts to four-year concurrent terms in even-numbered years from coterminous districts. Commissioner elections are partisan, with a primary election in July, a runoff election, if necessary, in August, and the general election in November. Board of education contests are nonpartisan.

The benchmark method of election and districting plan result from the 1987 settlement of a lawsuit challenging the at-large method of electing members of the county commission under Section 2 of the Voting Rights Act, 42 U.S.C. 1973. *Glover* v. *Long County Bd. of Comm'rs*, No. 2:87-cv-20 (S.D. Ga.). The county has not redistricted in twenty-five years, since adopting the single-member district system to comply with the court's order.

We start our review with an analysis of whether the county has established the absence of a discriminatory effect. A voting change has a discriminatory effect if it will lead to a retrogression in the position of members of a racial or language minority group (*i.e.*, will make members of such a group worse off than they had been before the change with respect to their opportunity to exercise the electoral franchise effectively). *Beer* v. *United States*, 425 U.S. 130, 141 (1976).

Under the benchmark plans, black persons constitute 47.1 percent of the total population, 47.2 percent of the voting age population, and 44.5 percent of the registered voters in District 3. Our analysis of electoral behavior establishes that voting is racially polarized throughout the county. We have concluded, however, that there is a sufficient level of consistent crossover voting by white persons in the benchmark district to provide black voters with the ability to elect their candidate of choice. Accordingly, under the benchmark plans, African American voters have the ability to elect candidates of choice in District 3.

Under the proposed plans, the black voting age population of District 3 decreases by 6.7 percentage points, from 47.2 to 40.5 percent, and the total black population decreases by 5.3 percentage points, from 47.1 to 41.8 percent. Due to this change, African American voters experience a retrogression of their ability to elect candidates of choice. The evidence also indicates that this retrogression was avoidable.

We recognize that as a result of the county's twenty-five year hiatus since its last redistricting, the release of the 2010 Census data would require significant population movement to meet the one-person, one-vote standard. "Section 5 does not require jurisdictions to violate the one-person, one-vote principle." *Guidance Concerning Redistricting Under Section 5 of the Voting Act*, 76 Fed. Reg. 7470, 7472 (Feb. 9, 2011). To satisfy the constitutional requirement, the county expanded District 3, which was significantly underpopulated, to the east along Highway 84. The district then expands to the northeast in the eastern portion of the county, while failing to add any population to the southeast. This configuration precluded the county

from enacting non-retrogressive plans. Illustrative plans indicate that had the county continued to expand District 3 to the southeast, it could have devised a plan that was not retrogressive while adhering equally well to the county's other redistricting criteria. *Id.*

Because we conclude that the county has failed to meet its burden of demonstrating that the proposed plans will not have the statutorily-prohibited effect, we do not make any determination as to whether it has established the plans were not adopted with a discriminatory purpose.

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 neither have 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. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the objection is withdrawn or the county obtains the requisite judgment from that court, the submitted changes continue 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 Long County and the Long County School District plan to take concerning this matter. If you have any questions, you should contact Robert S. Berman, a deputy chief in the Voting Section, at 202/514-8690.

Sincerely,

Thomas E. Perez
Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

December 21, 2012

Mr. Dennis R. Dunn, Esq.
Deputy Attorney General
40 Capitol Square SW
Atlanta, Georgia 30334-1300

Dear Mr. Dunn:

This refers to Section 9 of Act No. 719 (S.B. 92) (2012), which amends O.C.G.A. Section 21-2-139(a) to provide that this code section applies to all nonpartisan elections for members of consolidated governments, and that such elections shall be considered county elections and not municipal elections for purposes of this code section, for the State of Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your response to our August 3, 2012, request for additional information on November 1, 2012; additional information was received through December 6, 2012.

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including previous submissions. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group. *Georgia* v. *United States,* 411 U.S. 526 (1973); *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965,* 28 C.F.R. 51.52(c). For the reasons discussed below, I cannot conclude that the state's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed change.

At the outset, we note that Section 9 of Act 719, which provides that all nonpartisan elections for members of consolidated governments be held in conjunction with the July primary in even-numbered years, was proposed as statewide legislation and does not name any specific jurisdictions. Its sole result, however, is a rescheduling of the date for mayoral and commissioner elections for the consolidated government of Augusta-Richmond from November to July in even-numbered years. The six other consolidated governments in the state either do not have any nonpartisan elected offices or already elect their nonpartisan officers on that date.

Likewise, nonpartisan judicial seats have already been rescheduled as the result of prior legislation. The instant legislation also leaves undisturbed the date of all other municipal elections in the state, including nonpartisan municipal elections, on the November election date.

Augusta-Richmond has a total population of 200,549, of whom 109,088 (54.4%) are black persons, and a voting age population of 151,244, of whom 76,987 (50.9%) are black persons. The consolidated government is governed by a mayor, elected at-large, who only votes in the case of a tie, and a ten-member board of commissioners, eight of whom are elected from single-member districts and two of whom are elected from super-districts. They are elected by majority vote to serve four-year staggered terms in nonpartisan elections held on the November general election date in even-numbered years.

An overall review of voter registration and turnout data indicates that voter turnout is substantially lower in July than November for both black and white voters. The drop in the participation rate for black voters, however, is significantly greater than that for white voters. This differential has been particularly dramatic in recent elections.

For example, in 2012, 74.5 percent of the black persons registered to vote in Augusta-Richmond cast a ballot in the November election; in the July election, their turnout rate was 33.2 percent. By comparison, the turnout rates for white registered voters were 72.6 percent for the November election, and 42.5 percent for the July election. This means that in percentage terms, black persons were 55.4 percent less likely to vote in July than in November, while white persons were only 41.4 percent less likely to vote.

The same pattern is evident in the turnout figures for 2010, a non-presidential election year. The data show that in 2010, black voters were 75.9 percent less likely to vote in July than in November, while white voters were only 62.6 percent less likely to vote in July than in November. Not surprisingly, this has a significant impact on the racial composition of the electorate in each election; in 2010, for example, black voters constituted 53.2 percent of the electorate in November, but only 43.4 percent in July.

Our analysis, therefore, indicates that moving Augusta-Richmond's mayoral and commissioner elections from November to July would have a retrogressive effect on the ability of minority voters to elect candidates of choice to office.

With respect to the state's ability to demonstrate that the proposed change was adopted without a prohibited purpose, the starting point of our analysis is *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). In *Arlington Heights*, the court provided a non-exhaustive list of factors that bear on the determination of discriminatory purpose, including, but not limited to, the disparate impact of the action on minority groups; the historical background of the action; the sequence of events leading up to the action or decision; the legislative or administrative history regarding the action; departures from normal procedures; and evidence that the decision-maker ignored factors that it has otherwise considered important or controlling in similar decisions. *Id.* at 266-68.

Our analysis of the evidence also precludes a determination that the state has met its burden of showing that the proposed change was not adopted, at least in part, with a discriminatory purpose. Voting is racially polarized in Augusta-Richmond. Census figures show that the black population has gradually increased over the years, such that black persons now comprise a majority of both the total and voting age populations in the consolidated jurisdiction. As a result of these changing demographics, electoral outcomes are particularly dependent on voter turnout.

Although the change affects only Augusta-Richmond, it does not appear to have been requested by local citizens or officials. There is no evidence that the legislation's sponsors informed, much less sought the views of the local delegation, minority legislators, or local officials about the change at any point during its conception or consideration by the legislature. On the contrary, as the change progressed through the legislative process, the board of commissioners adopted a resolution opposing any change in law requiring its elections to move to July.

In addition, the rationales provided in support of the change do not withstand scrutiny. The state notes that a July election date is preferable because it provides more time for elected nonpartisan judicial officers to transition their law practices before taking office in January. But the earlier election date for nonpartisan judicial elections has already been implemented statewide, including in Augusta-Richmond, as a result of previous legislation; the change at issue here would adjust the date of mayoral and commissioner elections only. The proponents also note that the proposed change would shorten the crowded November ballot, reduce voting times, and alleviate administrative and financial burdens associated with a longer ballot. But local election officials indicated in the course of our review that these benefits had already been accomplished as a result of the change to the election calendar for judicial offices, and that changing the date for mayoral and commissioner races was unlikely to provide any incremental benefit. Nor does the change advance proponents' stated interest in statewide uniformity; to the contrary, implementation of the change would result in Augusta-Richmond being the only municipal government in the state that would not have local elections in November. Where the purported nondiscriminatory reasons for the change appear pretextual, and where the effect of the change would be to disproportionately reduce turnout among black voters, we cannot conclude that the legislation's purpose was not to depress black voter participation. *Reno* v. *Bossier Parish Sch. Bd.*, 520 U.S. 471, 487 (1997); *City of Pleasant Grove* v. *United States*, 479 U.S. 462, 470 (1987).

The historical context in which we review the proposed change is also illustrative. This is not the first instance in which the Department has reviewed the effect of a July election in Augusta-Richmond and concluded that it did not pass scrutiny under Section 5. In 1988, the City of Augusta and Richmond County sought to hold the referendum election on consolidation in July. On July 15, 1988, the Attorney General concluded that an election at that time would have a disparate impact on minority voter participation, resulting in a retrogressive effect on minority voting strength.

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); 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 Section 9 of Act No. 719 (S.B. 92) (2012).

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. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the United States District Court for the District of Columbia is obtained, the submitted change 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 that the state plans to take concerning this matter. If you have any questions, you should contact Robert S. Berman (202/514-8690), a deputy chief in the Voting Section.

Sincerely,

Thomas E. Perez
Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

JUL 2 2002

The Honorable Bill Robertson
Mayor
P.O. Box 580
Minden, Louisiana 71058

Mr. H. Gray Stothart II
Coordinating & Development Corporation
P.O. Box 37005
Shreveport, Louisiana 71133-7005

Dear Mayor Robertson and Mr. Stothart:

This refers to the 2001 council redistricting plan for the City of Minden in Webster Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our April 17, 2002, request for additional information on May 2, 2002; supplemental information was received through May 28, 2002. 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 city'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 City of Minden has a population of 13,027, of whom 52.1 percent are black. The city council consists of five members elected from single-member districts to serve four-year, concurrent terms. Under 2000 Census data, three of the five districts in the current, or benchmark, plan have both total and voting-age populations that are majority black and which in fact have been electing the candidate of choice of black voters. Under the proposed plan, in two of these three districts 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 third district, District C. 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 within District C may be marked by a pattern of racially polarized voting. Moreover, we analyzed several city-wide elections to determine whether black voters have the present ability to elect candidates of choice under the benchmark plan District C 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 probably would not. Analysis of prior elections implies that under District C, as configured under the proposed plan, the black candidate of choice would lose, or, at best, win by an extremely narrow margin. Accordingly, at a minimum, the city has not carried its burden of proof under Section 5 of showing that implementation of the proposed plan will not have a retrogressive effect on the ability of minority voters to effectively exercise their electoral franchise.

Moreover, this potential retrogression was avoidable. Our analysis of the information submitted indicates that the reduction of the black population percentage in District C was not required to comply with the city's stated redistricting criteria. First, the district had the lowest deviation of all districts and did not require any modification. Second, the city's own consultant presented an alternative plan, Plan B, which satisfied the city's initial redistricting criteria and maintained the demographics of the benchmark district.

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 city's ability to demonstrate that the plan was adopted without a prohibited purpose, we note that the city was not compelled to redraw the district, and even if it wished to do so, the city was presented with an alternative that met all of its legitimate criteria while maintaining the minority community's electoral ability in District C, an alternative the city rejected. Most probative on the issue of intent is the fact

that during the redistricting process the city explicitly decided to eliminate one of three existing majority minority districts in favor of a "swing district," more similar to the city's redistricting configuration after implementation of the 1994 redistricting plan. In these circumstances, we cannot conclude that the city has sustained its burden, as it must, that implementation of the plan in question was not motivated by a discriminatory 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 Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that the city has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan.

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 neither have 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 changes continue 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 Minden plans to take concerning this matter. If you have any questions, you should call Ms. Judith Reed (202-305-0164), an attorney in the Voting Section. Refer to File No. 2002-1011 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 4 2002

Mr. Gregory B. Grimes
Superintendent
Pointe Coupee Parish School District
Post Office Drawer 579
New Roads, Louisiana 70760-0579

Ronald E. Weber, Ph. D.
President, Campaign & Opinion
Research Analysts, Inc.
116 East Cornerview Road
Gonzales, Louisiana 70737

Dear Mr. Grimes and Dr. Weber:

This refers to the 2002 redistricting plan and the postponement of the October 5, 2002, primary election for the Pointe Coupee Parish School District in Pointe Coupee Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our July 7, 2002, request for additional information on August 5, 2002; supplemental information was received through September 12, 2002. We received your submission of the postponement of the primary election on September 23, 2002.

With regard to the postponement of the primary election, the Attorney General does not interpose any objection. However, 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 change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). When the procedures for the conducting the postponed election, including the new date, are finalized and adopted, these procedures, and any other changes affecting voting will require Section 5 review. See 28 C.F.R. 51.15.

With regard to the 2002 redistricting plan, we have considered carefully the information you have provided, as well as census data, comments from interested parties, and other information, including the school district's previous submissions. As discussed further below, I cannot conclude that the school district's burden to demonstrate that the plan does

not result in a discriminatory effect under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2002 redistricting plan for the school district.

The 2000 Census indicates that the Pointe Coupee Parish School District has a total population of 22,763, of whom 8,572 (37.7%) are black. The school district is governed by an eight-member board, elected from single-member districts to concurrent four-year terms. According to the 2000 Census, there are three districts under the benchmark plan, Districts A, C, and D, in which black persons are a majority of the voting age population: in District A it is 50.0 percent; in District C it is 72.0 percent, and in District D it is 75.3 percent. In contrast, the proposed 2002 redistricting plan contains only two such districts, Districts C and D. Application of the 2000 Census to the proposed plan reveals that the black percentage of the voting age population in District A falls to 47.4 percent.

Our analysis of elections held in the school district indicates that black voters in District A as well as in Districts C and D have been electing candidates of choice under the benchmark plan on the basis of strong, cohesive black support. A review of school board elections in District A during the 1990s shows that a black candidate of choice was elected in 1990, lost the 1994 runoff election by 23 votes, and then again prevailed in the 1998 primary election by 25 votes. The school board's own analysis of these elections shows extremely high polarization in these elections: 93.7 to 95.7 percent of the blacks who turned out voted for the preferred black candidate. Our statistical analysis also shows that white voters provide only minimal support to candidates supported by the minority community.

In the face of this analysis, the school board has argued that proposed District A, which reduces the proportion of minority voting age residents by 2.6 percentage points, will remain a district in which minority voters will retain the ability to elect candidates of their choice. The board points to the results of the 1995 and 1999 gubernatorial races involving a black candidate as relevant to determining the performance of elections in new District A. However, these elections are not as probative as the endogenous elections discussed above. Moreover, while the minority-preferred candidate did appear to attract a small amount of white crossover in 1995, the results once again show an overall pattern of severe racial bloc voting with white voters giving only minimal support to the candidate supported by the minority community.

Given the slim margins of victory and defeat experienced by the minority candidate in District A school board elections and the prevalence of racially polarized voting, there is substantial doubt that minority voters would retain the ability to elect their candidate of choice in District A under the proposed plan.

Our review of the school district's benchmark and proposed plans suggests that the significant reduction in the black voting age population in District A in the proposed plan, and the likely resulting retrogressive effect was neither inevitable nor required by any constitutional or legal imperative. The board claims that the only change that could be made to District A, which was underpopulated, was to add Precinct 5 which lies immediately to its south. While it is true that Precinct 5 lies directly to the south of District A, it was not necessary to add the entire precinct in order to bring the plan into population equality. The board split other precincts into new precincts in order to make the changes it wished to make in other areas of the district, and could have done so with Precinct 5, thereby, avoiding the retrogression.

Under the Voting Rights Act, a jurisdiction seeking to implement a proposed change affecting voting, such as a redistricting plan, must establish that, in comparison with the status quo, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." See Beer v. United States, 425 U.S. 130, 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, preclearence must be denied. 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). Finally, the submitting authority has the burden of demonstrating that the proposed change has neither the prohibited purpose nor effect. Id. at 328; see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

In light of the consideration discussed above, I cannot conclude that your burden of showing that a submitted change does not have a discriminatory effect has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan. 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 neither have 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 2002 redistricting plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

If you have any questions, you may call Ms. Judybeth Greene (202-616-2350), an attorney in the Voting Section. Refer to File No. 2002-2717 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd
Assistant Attorney General

U. S. Departm 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

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 13, 2003

Mr. John R. Sartin
Superintendent, Parish School Board
P.O. Box 599
Rayville, Louisiana 71269

Mr. David A. Creed
Executive Director
North Delta Regional Planning & Development District
1913 Stubbs Avenue
Monroe, Louisiana 71201

Dear Messrs. Sartin and Creed:

This refers to the 2002 redistricting plan for the Richland Parish School District in Richland Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your most recent partial responses to our August 13, 2002, request for additional information, and our October 30 and December 6, 2002, and March 11, 2003, followup requests on March 14 and April 21, 2003.

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. In light of the considerations discussed below, I cannot conclude that your burden under Section 5 of the Voting Rights Act has been sustained in this instance. Therefore, on behalf of the Attorney General, I am compelled to object to the 2002 redistricting plan.

The school district's failure to respond completely to our August 13, 2002, written request for additional information, as well as our three followup requests, has hampered our review of your submission. The purpose of these requests is to identify the information necessary to assist the Department in its analysis of whether a covered jurisdiction has met its burden of proof under Section 5. Our prior letters have identified several items of information, which are routinely provided in submissions, and should be readily available to you that you have neither provided nor indicated are not available. We have proceeded to analyze your submission based on the information you did make available and the information we were able to gather on our own.

According to the 2000 Census, the school district has a total population of 20,981, of whom 7,939 (37.8%) are black. The school board has nine members, all elected from single-member districts to concurrent four-year terms in even-numbered, non-presidential election years. Under 2000 Census data, black persons constituted a substantial majority of both the total and voting age populations in three of the nine districts in the 1993 benchmark plan and black voters have consistently elected candidates of choice in these three districts. Under the proposed plan, black voters will continue to have the ability to elect candidates of their choice in two of these three districts (Districts 3 and 6).

The proposed changes to the third district located in the Delhi area, which was known as District 2 under the benchmark plan, reduce the black share of the total population in District 2 by 15.5 percentage points, and reduce the black share of the voting age population by 18 percentage points. However, because of the school board's failure to provide the necessary data that we have requested on several occasions, we are unable to conclude that this change is not, in fact, retrogressive, and will continue to allow black voters the ability to elect candidates of 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. Georgia v. United States, 411 U.S. 526 (1973); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52). The school district has not carried its burden of proof under Section 5 of showing that implementation of the proposed plan will not have a

retrogressive effect on the ability of minority voters to effectively exercise their electoral franchise. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan.

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. Should you make such a request, we would ask that the school board provide the information identified previously as necessary to complete our analysis. 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.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Richland Parish School District plans to take concerning this matter. If you have any questions, you should call Mr. Chris Herren (202-514-1416), an attorney in the Voting Section. Refer to File No. 2002-3400 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Washington, D.C. 20530

October 6, 2003

Mr. Carlos Notariano
Chairperson, Parish Council
P.O. Box 215
Amite, Louisiana 70422

Ronald E. Weber, Ph.D.
President, Campaign & Opinion Research Analysts
116 East Cornerview Road
Gonzales, Louisiana 70737

Dear Mr. Notariano and Dr. Weber:

I am writing in reference to Tangipahoa Parish, Louisiana's recent submission to the Attorney General, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, regarding (i) the parish's 2003 redistricting plan; (ii) its creation, consolidation, and realignment of voting precincts; and (iii) its designation of polling places. After receiving your initial submission on February 24, 2003, the Voting Section of the Civil Rights Division sought additional information on April 23 to complete the requisite analysis. The parish sent these requested materials on August 7 and September 8.

The Civil Rights Division has considered carefully the information you have provided, as well as census data, comments from interested parties, and other information, including the parish's previous submissions. As discussed further below, I cannot conclude that the parish has sustained its burden under Section 5 with regard to the 2003 redistricting plan. Accordingly, on behalf of the Attorney General, I must object to the plan.

According to the 2000 Census, Tangipahoa Parish has a total population of 100,588, of whom 28,489 (28.3%) are black. The census further indicates that there are 72,699 persons of voting age, of whom 18,195 (25.0%) are black. As of January 3, 2003,

there were 59,722 registered voters in the parish, of whom 14,860 (24.9%) were black. Since the 1990 Census, the black share of the parish's total population has remained virtually unchanged from 28.6 percent in 1990, to 28.3 percent in 2000. In addition, the black population in District 3 has steadily increased as a percentage of the total population over the past two decades.

We have carefully examined the circumstances surrounding the proposed reduction in the black population in benchmark District 3 from 62.4 to 54.1 percent, with a corresponding drop in the black voting age population percentage from 58.3 to 49.9 percent. The parish contends that the proposed plan is not retrogressive because the changes do not alter the level of minority voting strength when compared to the benchmark. Respectfully, our analysis precludes us from reaching a similar conclusion.

In the benchmark plan, blacks represent a majority of the total, voting age, and registered voter populations in Districts 3 and 7. Under the proposed plan, however, only District 7 retains a majority of black persons in the voting age population and among registered voters; in District 3, the black majority in each of these categories is eliminated. Analysis of electoral information in the parish indicates that the substantial reduction in the black population in District 3 will result in a plan that does not afford black voters the same ability to exercise the electoral franchise effectively that they have under the benchmark plan.

The parish suggests any retrogression that may have occurred was unavoidable because no alternatives existed to remedy the malapportionment in District 3 without decreasing the black population percentage. Yet the 2000 Census reports that the black population in Tangipahoa Parish has not declined significantly since 1990, but instead has remained steady at just over 28 percent. Moreover, as part of our analysis, we devised an illustrative plan to determine whether the retrogression was, in fact, unavoidable. See Georgia v. Ashcroft, 123 U.S. 2498, 2502 (2003); Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412, at 5413, (Jan. 18, 2001). In so doing, we were able to create a 10-district plan not significantly different from the benchmark plan that met the parish's traditional redistricting criteria and in which the black percentage of the voting age population in District 3 is maintained at or above benchmark levels. (We note, of course, that the purpose of the illustrative plan is only to establish the feasibility of a non-retrogressive plan.)

Our review of the benchmark and proposed plans indicates that the reduction in the black population percentage in District 3 was neither inevitable nor required by any constitutional or legal imperative. Alternative approaches available to the parish

could have avoided reducing black voting strength in District 3 below the benchmark plan levels, while adhering substantially to the parish's redistricting criteria as described in your submission.

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 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 parish's 2003 redistricting plan.

I would 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 change continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

The Attorney General will make no determination regarding the submitted voting precinct and polling place changes because they are directly related to the objected-to redistricting plan.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Tangipahoa Parish plans to take concerning this matter. If you have any questions, you should call Mr. Robert Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

R. Alexander Acosta
Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 12, 2003

Ms. Nancy P. Jensen
Capital Region Planning Commission
P.O. Box 3355
Baton Rouge, Louisiana 70821-3355

Dear Ms. Jensen:

This refers to the 2003 redistricting plan for the City of Plaquemine, in Iberville Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our July 14, 2003, request for additional information on October 14, 2003; supplemental information was received on November 5, 2003.

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 city's previous submissions. As discussed further below, I cannot conclude that the city has sustained its burden under Section 5. Accordingly, on behalf of the Attorney General, I must object to the redistricting plan.

The 2000 Census indicates that the City of Plaquemine has a voting age population of 5,240, of whom 44.31 percent are black persons. The city's board of selectmen consists of six members, elected from single-member districts to serve four-year, concurrent terms, and a mayor elected at large.

According to census data, under the benchmark districting plan currently in effect, there are three districts in which black persons are a majority of the voting age population and are able to elect candidates of choice to office. The proposed plan retains only two such districts. Districts 2 and 6 have black voting age population percentages of 80.4 and 86.9 percent, respectively, in the proposed plan. In District 3, however, the black voting age population is reduced from 51.1 percent in the benchmark plan to 48.5 percent in the redistricting plan.