Our analysis of elections shows that the level of racial polarization in voting for the city's board of selectmen, as well as other elections within the city, is such that this level of reduction, although relatively small, calls into question the ability of black voters to elect their candidate of choice. The reduction in the black voting age population percentage in District 3 was neither inevitable nor required by any constitutional or legal imperative. Alternative approaches available to the city could have avoided reducing black voting strength below the benchmark plan levels while adhering to the city's redistricting criteria as described in your submission.

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." Beer v. United States, 425 U.S. 130, 141 (1976). 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). 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.

Since retrogression is assessed on a city-wide basis, Plaquemine may remedy this impermissible retrogression either by restoring District 3 to a district where black voters can elect a candidate of choice or by creating a new viable majority minority district elsewhere in the City.

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 However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable.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.

If you have any questions, you should call Ms. Judybeth Greene (202-616-2350), an attorney in the Voting Section. Refer to File No. 2003-1711 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

R. Alexander Acosta
Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 4, 2004

The Honorable Phillip A. Lemoine
Mayor
P.O. Box 390
Ville Platte, Louisiana 70586

Glenn A. Koepp, Esq.
Chief Executive Officer
Redistricting, L.L.C.
P.O. Box 80279
Baton Rouge, Louisiana 70898

Dear Mayor Lemoine and Mr. Koepp:

This refers to the 2003 redistricting plan for the City of Ville Platte in Evangeline Parish, Louisiana, 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 February 9, 2004, request for additional information through May 7, 2004.

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. Under Section 5 of the Voting Rights Act, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race. Georgia v. Ashcroft, 123 S.Ct. 2498 (2003); Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52 (c). 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 2003 redistricting plan for the city council.

According to the 2000 Census, the city has a total population of 8,596 persons, of whom 4,864 (56.6%) are black. Of

object to the 2003 redistricting plan for the city council.

According to the 2000 Census, the city has a total population of 8,596 persons, of whom 4,864 (56.6%) are black. Of

the 5,945 persons of voting age, 2,867 (48.2%) are black. Since 1980, the city's black population percentage has increased both consistently and considerably. In 1980, black persons constituted less than a third of the city's population; now they are over 56 percent. In 1980, the black voting age population was barely over a quarter of the total; now it is almost half. According to the city's 2004 voter registration data, black persons constituted 51.3 percent of the city's eligible voters.

Our analysis reveals that the black population in District F has increased significantly since the district's creation in 1997 and that this trend is likely to continue. The district's black population level increased from 28.7 percent at the time the 1997 plan was adopted, which was based on 1990 Census data, to 55.1 percent in 2000. The most recent demographic information, particularly registered voter data, indicates that black persons currently appear to constitute a majority of the voting age population in the district. The proposed 2003 redistricting plan eliminates the black population majority by reducing it to 38.1 percent.

Our electoral analysis indicates that elections in the city, including in District F, are marked by a pattern of racially polarized voting. Under the benchmark plan, District F is a district in which minority voters have attained the ability to elect candidates of their choice because of the significant increase in black voting strength in recent years. Further, the evidence establishes that, in light of existing demographic patterns and trends, this ability would even more clearly exist in the future within the benchmark district or a district with a similar configuration. The city proposes to drop the district's black population percentage by 17 points. Under such a reduction and within the context of the racially polarized elections that occur in the city, black voters will have lost the electoral ability they currently possess.

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 effective exercise of the electoral franchise). Reno v. Bossier Parish School Board, 528 U.S. 320, 340, 328 (2000); Beer v. United States, 425 U.S. 130, 140-42 (1976). The reduction in black voting strength under the proposed plan in District F makes minority voters worse off than under the benchmark plan and eliminates their ability to elect the candidate of their choice.

Moreover, "Section 5 looks not only to the present effects of changes but to their future effects as well." Reno, supra, at 340, citing City of Pleasant Grove v. United States, 479 U.S. 462, 471 (1987). Under these facts and against this standard, the city has not met its burden of establishing that the significant reduction in the minority population in District F does not result in the proposed plan effectuating a retrogression of the minority voting strength in the city.

In addition, and perhaps more clearly, our analysis indicates that the evidence precludes a determination that the proposed plan was not adopted, at least in part, to effectuate this proscribed effect.

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). 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.

Following the framework presented in that case, we turn first to the city's past redistricting efforts, particularly those in 1993 and 1995. In each instance the Attorney General determined that the city failed to establish that, under an analogous set of facts, those efforts were not motivated, at least in part, by a discriminatory purpose.

Second, despite the existence under the benchmark plan of four districts in which black persons were a majority, the city sought a redistricting plan, "which would consist of three majority-minority districts, and three majority districts." Letter of April 2, 2004, at 1. The city has provided no evidence to rebut the conclusion that use of such a criterion under these circumstances was designed, at least in part, to retrogress minority voting strength by eliminating the electoral ability of black voters in District F. Garza and United States v. County of

circumstances was designed, at least in part, to retrogress minority voting strength by eliminating the electoral ability of black voters in District F. Garza and United States v. County of

Los Angeles, 918 F.2d 763, 778 n.1 (9th Cir. 1990), (Kozinski, J., dissenting), cert. denied, 498 U.S. 1028 (1991).

Third, the precipitous drop in black voting strength in District F was not driven by any constitutional or statistical necessity. The district required, at the most, only minimal adjustments. However, the city undertook wholesale changes, swapping white neighborhoods for black neighborhoods, and moving black population from District F into District B, a district which was already 78.8 percent black.

The city claims that the reduction in District F was necessary to retain the electoral ability of black voters in District B. Contrary to the city's assertion, however, a plan that retains benchmark levels of minority voting strength while following most of the city's criteria, was possible. The city reviewed, but gave no serious consideration to Plan 4, an alternative plan that maintained District F at the benchmark level and our analysis indicates that District B with 66.3 percent black population level unquestionably remains a viable district for minority-preferred candidates. Thus, the retrogression that results from the plan was avoidable. Georgia, supra, at 2511.

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 city's 2003 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 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 the City of Ville Platte 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. 20035*

April 25, 2005

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

Dear Mr. Creed:

This refers to the 2003 redistricting plan for the Town of Delhi 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 response to our December 15, 2003, request for additional information on February 22, 2005.

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 town's previous submissions. Under Section 5 of the Voting Rights Act, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race. *Georgia v. Ashcroft*, 539 U.S. 461 (2003); *Procedures for the Administration of Section 5 of the Voting Rights Act*, 28 C.F.R. 51.52 (c). As discussed further below, I cannot conclude that the town's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2003 redistricting plan for the Town of Delhi.

According to the 2000 Census, the town has 2,247 persons of voting age, of whom 1,153 (51.3%) are black. The black population percentage within the town has steadily increased since 1970. As of April 2005, the total number of registered voters in the town was 2,202, of whom 57% are black.

Under the benchmark plan, black persons constitute a majority of the registered voters in four of the town's five wards, supporting the conclusion that minority voters have the ability to elect their candidates of choice in each district. Wards A and C have exceedingly high black voting age populations of 89.3% and 80.2%, respectively, and without question, will continue to provide black voters with the ability to elect their candidates of choice since the proposed plan

only slightly changes those percentages to 90.7% for Ward A and 81.8% for Ward C. Wards B and D reflect the increase in the black population that has occurred since the 1990 Census. Currently, 53.9% of Ward B's registered voters are black. The same transformation is evident in Ward D, which now has a black voter registration level of 60.9% and the proposed plan makes only a slight change in Ward D, reducing the black voting age population by only 2.6 percentage points.

Our analysis of electoral behavior in the town's elections indicates that voting is polarized along racial lines. The implementation of the proposed plan within the context of that racially polarized voting will eliminate one of the four wards in which black voters currently have the ability to elect candidates of choice. It appears that the only reason that black voters have not already elected their candidate of choice in that fourth ward is that, save for a single special election in 2001 in one ward, the city has not held a municipal election in seven years. When that election was held in 1998, the voter registration levels in Wards B and D indicated black persons had almost, but not quite, reached a majority status in those wards. They now have. Implementing the proposed plan will eliminate that ability in Ward B because it decreases the black voting age population by 10.5 percentage points to only 37.9%.

We also note that the elimination of one of the four wards in which minorities, based on their voter registration levels, have the ability to exercise the franchise effectively under the benchmark plan, was not necessary. The town rejected a less-retrogressive alternative, Plan 5, which was presented to it during its initial redistricting considerations three years ago. Moreover, utilizing the most current data, we have utilized the town's own redistricting criteria to devise an illustrative plan with four districts that have black voter registration majorities. Without question, black voters in the Town of Delhi are worse off under the proposed plan than they were under the benchmark plan.

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 effective exercise of the electoral franchise). *Reno v. Bossier Parish School Board*, 528 U.S. 320, 340, 328 (2000); *Beer v. United States*, 425 U.S. 130, 140-42 (1976). The town has failed to establish that the implementation of the proposed plan will not make minority voters worse off than they were under the benchmark plan.

In addition, our analysis indicates that the evidence precludes a determination that the proposed plan was not adopted, at least in part, to effectuate a retrogression in the ability of black voters in the Town of Delhi to elect candidates of choice.

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). There, the Supreme Court identified the analytical structure for determining whether racially discriminatory intent exists because direct evidence of such purpose or intent seldom exists in discrimination cases. 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. Applying these factors, the totality of the circumstantial evidence suggests the town intentionally sought the result we anticipate from the proposed plan.

Looking to the historical background of the city's decision, it is undisputed that Delhi's black population has consistently and significantly increased over the past three decades, and the increase is expected to continue. There are now four wards under the benchmark plan in which black persons are a majority of the registered voters, yet the town persists in its efforts to maintain a plan with only three such districts.

The drop in black voting strength in Ward B was not driven by any constitutional or statistical necessity. The town has made no claim that the reduction of the black population in this wards was necessary, nor has the town offered any justification for its actions, other than to say that the plan is legal because it is within the constitutional standard for population deviation and was adopted by a majority of the board. The board rejected a less-retrogressive alternative plan that complied with traditional redistricting principles and applicable law and that retained minority voting strength closer to benchmark levels. Further, as noted above, we were able to devise an illustrative plan that evidenced no retrogression, maintaining four wards in which black voters could elect a candidate of choice. Thus, the retrogression that results from the plan was avoidable, either by the adoption of Plan 5, a less-retrogressive alternative rejected by the board three years ago, or by a current plan that results in no retrogression whatsoever.

Moreover, the demographer hired by the town to prepare and submit its redistricting plan has told the board that the proposed plan does not best satisfy the redistricting criteria and retrogresses minority voting strength. Nevertheless, the town has twice adopted plans that are contrary to that guidance. In sum, the evidence precludes a determination that, under these circumstances, the proposed plan was not adopted, at least in part, with an intent to retrogress the ability of black voters 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); 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 town's 2003 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 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 the Town of Delhi 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

AUG 10 2009

William P. Bryan III, Esq.
Assistant Attorney General
Erin C. Day, Esq.
Assistant Attorney General
P.O. Box 94005
Baton Rouge, Louisiana 70804-9005

Dear Mr. Bryan and Ms. Day:

This refers to the reenactment of La.R.S. 18:532.1(D) and 18:1903(A), which provides that no election precinct shall be created, divided, abolished, or merged, or its boundaries otherwise changed between January first of any year of which the last digit is nine and December thirty-first of any year of which the last digit is three, unless otherwise ordered by a court of competent jurisdiction, pursuant to Act No. 136 (H.B. 1017) (2008), for the State of Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your partial responses to our October 20, 2008, request for additional information and January 21 and April 29, 2009, follow-up letters on December 22, 2008, March 23 and June 11, 2009.

We have considered carefully the limited information that you have provided, as well as census data, comments, and information from other interested parties as well as the state's prior submissions. 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); Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.52. As discussed further below, I cannot conclude that your burden has been sustained in this instance. Therefore, based on the information available to us, on behalf of the Attorney General, I must object to the proposed provisions of Act No. 136 (2008) regarding the time period during which voting precinct boundaries cannot be changed.

In the past, the state, in preparation for the decennial census, has limited the ability of parish officials to change voting precinct boundaries in anticipation of the tabulation and release of new census data. Under existing law, parish officials would not be permitted to alter voting precinct boundaries from January 1, 2009, through December 31, 2010, unless ordered to do so by a court of competent jurisdiction. On October 23, 1990, we informed the state that no objection would be interposed to this practice, which was authorized by Act No. 629 (1990).

Under the proposed changes, the period during which parish officials would be prohibited from changing precinct boundaries would be extended to December 31, 2013. The proposed changes are a sharp departure from prior law and practice in that they continue to freeze precinct boundaries for a longer period of time and do not provide exceptions or a window of opportunity similar to those available to elected officials in prior decades.

Unlike the legislation adopted during the 1990 and 2000 reapportionment periods, Act No. 136 (2008) neither includes opportunities for precinct changes during the time when redistricting is expected to occur, nor does it authorize local officials to change precinct boundaries if necessary to satisfy the requirements of federal law, including Section 5 of the Voting Rights Act. On January 13, 1998, the Attorney General interposed an objection to Act No. 1420 (1997), which imposed a restriction identical to the one that is presently under review. Among the concerns expressed by the Attorney General was the state's deletion of the windows of opportunity and exceptions to the prohibition on precinct changes. We have enclosed a copy of that letter for your information.

Following the 1998 objection, the state enacted and submitted Act No. 254 (1999) for review under Section 5. In that legislation, the state provided local officials with the ability to make precinct modifications during two periods of time or to address concerns that had led to the Attorney General interposing an objection. These provisions were similar to those in place during the 1990 reapportionment cycle. In the March 20, 2000, letter informing the state that no objection would be interposed to that act, we made explicit the effect of that determination on the 1998 objection by noting that the provisions in Act No. 254 (1999) allowing modifications would expire as of December 31, 2003, and "any effort to extend the general freeze to a year ending in three after 2003 would require the State to secure either withdrawal of the Attorney General's January 13, 1998, objection or preclearance from the District Court for the District of Columbia." For your information, we are also enclosing a copy of that letter. Thus, since that time the state has been on notice that the decision not to interpose an objection to Act No. 254 (1990) did not affect the 1998 objection.

Your initial submission, which we received on June 27, 2008, did not contain the information required to enable us to determine 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. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.52 through 51.57. After our repeated efforts to contact your office, you materially supplemented your submission on August 21, 2008. Our review of that information resulted in a written request for additional information with regard to the October 20, 2008, submission. Your response to our request for additional information, received on December 22, 2008, also failed to provide the necessary information. Most importantly, in view of the outstanding objection to Act No.1420 (1997), it did not explain why exceptions similar to those contained in Act No. 254 (1999) were no longer necessary or appropriate or that a factual basis now existed for a withdrawal of the 1998 objection. Accordingly, we sent a follow-up letter on January 21, 2009. Once again, your March 23, 2009, response, did not

provide the necessary information that we requested, including the basis for the state's conclusion that the exceptions contained in Act No. 254 (1999) were no longer necessary or appropriate. It was not until your response to our final follow-up letter, dated April 29, 2009, that you provided any response to the concerns identified in our earlier letters. In that June 11, 2009, response, you explained that during the periods of September 1, 2001, through March 1, 2002, and during December 1, 2002, through March 31, 2003, the Legislature approved changes to precincts for 58 of the state's 64 parishes. You indicated that these data showed that the exceptions were overused by local governing authorities, primarily for political purposes and gerrymandering, and, were, therefore, no longer appropriate. However, although your office agreed to provide us with the underlying data used to support this conclusion, we have yet to receive it and numerous attempts to contact your office in this regard were unsuccessful.

While we continue to be mindful of the state's interest in ensuring the orderly administration of elections, that interest must be bounded in some reasonable way so as not to impinge too heavily on the important interest the state and its political subdivisions have in complying with the requirements of federal law. Under the proposed changes, local officials will be hindered in their ability to comply with the Voting Rights Act because the state has not taken steps to ensure that they will have be able to adjust voting precinct boundaries, if necessary, to avoid any adverse impact on minority voting strength. The state has not provided us with any new information to demonstrate that the proposed changes, identical to those in Act No. 1420 (1997), will no longer be retrogressive.

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 proposed provisions of Act No. 136 (2008) regarding the time period during which voting precinct boundaries cannot be changed.

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 this objection. 28 C.F.R. 51.45. However, unless and until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed provisions of Act No. 136 (2008) that concern the time period during which voting precinct boundaries cannot be changed 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 State of Louisiana plans to take concerning this matter. If you have any questions, please call Mr. Robert Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

Loretta King

Loretta King
Acting Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

January 13, 1998

Angie Rogers LaPlace, Esq.
Assistant Attorney General
P.O. Box 94005
Baton Rouge, Louisiana 70804-9005

Dear Ms. LaPlace:

This refers to Section 2 of Act No. 1420 (1997), which changes the time period during which voting precinct boundaries cannot be changed; requires voting precinct boundaries to follow Census tabulation boundaries as of July 1, 1997; changes the effective dates for new precincts; specifies the voting precincts that will be used for reapportionment purposes; clarifies which voting districts are to be considered when consolidating precincts, and permits consolidation of voting precincts from different voting districts through June 30, 1998, for the State of Louisiana, 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 September 29, 1997, request for additional information on September 30 and November 14, 1997.

With the exception of provisions concerning the time period during which voting precinct boundaries cannot be changed, the Attorney General does not interpose any objection to the specified changes. 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 changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We cannot reach the same conclusion regarding the provisions of Act No. 1420 (1997) that concern the period during which voting precinct boundaries cannot be changed. To reach this conclusion, we have considered carefully the information you have provided in this submission, and the information in our files concerning the redistricting submissions of many of the parish governing authorities and school districts within the state following the 1990 Census, as well as Census data and information and comments from other interested persons.

Under state law, parish governing authorities are authorized to change voting precinct boundaries, but are generally required to do so in a manner that avoids splitting a voting precinct between two or more voting districts. In the past, the state, in preparation for the decennial census, has limited the ability of parish officials to change voting precinct boundaries in anticipation of the tabulation and release of new Census data. Under existing law, parish officials would not be permitted to alter voting precinct boundaries from January 1, 1999, through December 31, 2000, unless ordered to do so by a court or as a result of changes in municipal boundaries. It is anticipated that Census data will be made available to the state from the U.S. Bureau of the Census by April 1, 2001. Under the proposed changes, the period during which parish officials would be prohibited from changing precinct boundaries would be extended to December 31, 2003, except that voting precincts that include fewer than 300 voters may be consolidated after January 1, 2002, so long as consolidated precincts do not cross voting district lines as those districts are reapportioned. The proposed changes are a sharp departure from prior law and practice in that they continue the freeze for a longer period of time and without exceptions or a window of opportunity similar to those present in prior decades.

State officials indicate that they fully expect that subjurisdictions within the state will have completed the redistricting process and will have adopted new plans by December 31, 2003, in anticipation of state and local elections scheduled in that year. Thus, the five-year prohibition on precinct changes would freeze the boundaries of voting precincts during the critical period when state and local officials are engaged in redistricting. The proposed freeze, in combination with the state's requirement that voting precincts include no more than one voting district, will have a significant impact on the redistricting choices of state and local officials and, in effect, will require that newly drawn districts include whole voting precincts, regardless of the impact on minority voters.

Under existing law, parish election officials may generally use their discretion in determining the composition of voters included within a voting precinct primarily because voting precincts, in large part, serve only to define which voters will vote together in the same location on election day. This administrative function, albeit important, differs significantly from the function of voting district boundaries. If local officials are permitted to alter voting precinct lines in the redistricting context, they can continue to achieve the election administration function that precincts serve without hampering

redistricting choices. If, however, officials are not permitted to alter precinct boundaries and, where voting precincts do not fairly reflect minority voting strength, it will be virtually impossible to draw voting districts that fully reflect minority voting strength.

Unlike legislation adopted during the 1990 redistricting period in response to concerns by local officials about the freeze on precinct changes imposed at that time[1], Act No. 1420 (1997) does not include any opportunity for precinct changes during the time when redistricting is expected to occur. Nor does the Act authorize local officials to change precinct boundaries if necessary to satisfy the requirements of Section 5 of the Voting Rights Act. An early version of Act No. 1420 included an exception to the general prohibition on changing precincts and provided a window of opportunity for parish officials to change precinct lines once Census data were released and redistricting began. State officials indicate that the state did not include this window of opportunity and exception to the freeze provision in the final version of the bill adopted as Act No. 1420 because the state had not consulted with local officials before adopting the proposed freeze, and because sufficient time remains in advance of the 2000 Census to address these concerns. We, however, must evaluate the potential effect of voting changes the state has in fact enacted and submitted for Section 5 review -- not what the state may enact at some future point in time.

Our review of post-1990 Census redistricting submissions for parish governing authorities and school districts in the state suggests that if parish officials lack the authority to make changes in voting precinct lines during the entire period when most redistricting will occur, local officials may be forced to adopt plans that do not fairly recognize minority voting strength. Thus, the proposed changes may well hamper the ability of state and local officials to draw districts that do not fragment, pack or submerge minority voters, and, in the context of racially polarized voting, may well leave minority voters worse off in terms of their electoral opportunity under post-2000 redistricting plans. Voting changes that will "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise," violate Section 5. See Beer v. United States, 425 U.S. 130, 141 (1976).

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[1] These acts were precleared by the Department of Justice: Act 288 (1990), precleared on November 1, 1990; Act 925 (1992), precleared on December 1, 1992; and Act 286 (1993), precleared on November 16, 1993.

While we are not unmindful of the state's interest in ensuring the orderly administration of elections, that interest must be bounded in some reasonable way so as not to impinge too heavily on the important federal interest the state and its political subdivisions have in complying with the requirements of federal law. Under the proposed freeze provisions, local officials will be hamstrung in their efforts to comply with the Voting Rights Act because the state has not taken any steps to ensure that they will have an opportunity to adjust voting precinct boundaries in the context of redistricting in order to avoid the impact on minority voting strength that rigid adherence to the "whole precinct" redistricting requirement is likely to produce.

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 proposed provisions of Act No. 1420 (1997) that concern the time period during which voting precinct boundaries cannot be changed.

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 provisions of Act No. 1420 (1997) that concern the time period during which voting precinct boundaries cannot be changed continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Finally, we note that the provisions of Act No. 1420 (1997) precleared in this letter include provisions that are enabling in nature. Therefore, local jurisdictions are not relieved of their responsibility to seek Section 5 preclearance of any changes affecting voting that are adopted pursuant to this legislation (e.g., changes in voting precinct boundaries, including the creation, elimination and consolidation of precincts). See 28 C.F.R. 51.15.

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

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

JDR:GS:DDC:jdh
DJ 166-012-3
1999-2029

Voting Section
P.O. Box 66128
Washington, DC 20035-6128

March 20, 2000

Angie Rogers LaPlace, Esq.
Assistant Attorney General
P.O. Box 94005
Baton Rouge, Louisiana 70804-9005

Dear Ms. LaPlace:

This refers to Act No. 254 (1999), which amends the Louisiana election code to: impose a freeze on changes in voting precinct boundaries, absent a court order, until December 31, 2003 (La. R.S. 18:532.1(G)(1)); permit precinct splits during the freeze if needed to comply with an objection by the United States Attorney General to a parish reapportionment plan or during two specified "time periods" when needed to draw new districting plans (La. R.S. 18:532.1(G)(2) and 18:1903); limit when precincts may be altered prior to an election (La. R.S. 18:532.1(E)(1) and (G)(2)(e)); remove the requirement that small precincts be consolidated during the freeze (La. R.S. 18:532.1(D)); specify the effective date of registration for persons who move within the same precinct (La. R.S. 18:110(B)(1)); and require candidates requesting a recount of absentee ballots to pay the cost of the recount (La. R.S. 18:1313(I)(2)(d)), for the State of 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 September 27, 1999, request for additional information on January 18, 2000; supplemental information was received on March 14, 2000.

Your March 14, 2000, letter states that Act No. 254 (1999) would not prevent local jurisdictions from drawing redistricting plans that split voting precincts before the occurrence of one of the two "time periods," during which such changes can be made, as long as the local jurisdiction provided that the precinct changes would not be effective until the "time period." With this understanding, the Attorney General does not interpose any objection to the submitted precinct freeze changes nor to the other specified changes. 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 changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

In addition, we note that the general provision extending a freeze on changing voting precinct boundaries to a year ending in three, contained in Act No. 1420 (1997) to which the Attorney General interposed an objection on January 13, 1998, is carried forward in Act No. 254 (1999)(La. R.S. 18:532.1(D) and 18:1903). This letter does not preclear that general provision, but rather the specific freeze period provided for in La. R.S. 18:532.1(G), with the understanding noted above. Therefore, any effort by the State to implement the extension of the general freeze provision to a year ending in three after 2003 would require the State to secure either withdrawal of the Attorney General's January 13, 1998, objection or preclearance from the District Court for the District of Columbia.

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U. S. Department of Justice

Civil Rights Division

Washington, D.C. 20530

October 3, 2011

Ms. Nancy P. Jensen
Garnet Innovations
1564 Ormandy Drive
Baton Rouge, Louisiana 70808

Dear Ms. Jensen:

This refers to the 2011 redistricting plan and the creation, realignment, and renumbering of voting precincts for East Feliciana Parish, Louisiana, 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 1, 2011, request for additional information on August 2, 2011; additional information was received through August 29, 2011.

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 will have a discriminatory effect. *Georgia* v. *United States,* 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. The voting change at issue must be measured against the benchmark practice to determine whether it would "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer* v. *United States*, 425 U.S. 130, 141 (1976). As discussed further below, I cannot conclude that the parish's burden under Section 5 has been sustained with regard to the proposed 2011 redistricting plan. Therefore, on behalf of the Attorney General, I must object to the plan.

We have carefully considered the information you have provided, as well as other information such as census data, comments and information from other interested parties, and the parish's previous submissions. According to the 2010 Census, the parish has a total population of 20,267 persons, of whom 9,133 (45.1%) are African American. Of the 16,075 persons of voting age, 7,027 (43.7%) are African American.

We start our review of the plan's effect by determining the level of minority voting strength under the benchmark plan. Our analysis of elections conducted within the parish over the past decade indicates that black voters have the ability to elect candidates of choice in four benchmark districts: Districts 2, 3, 5, and 7. The proposed plan maintains that ability in three of these four benchmark districts. We reach a contrary conclusion with regard to District 5.

The census data indicate that between 2000 and 2010, the total black population in District 5 has remained relatively constant at approximately 53 percent, but that black persons have become a greater proportion of the registered voters, increasing from 43.9 percent in 2002 to 46.8 percent by September 2011. In the Town of Clinton, the municipality around which District 5 is based in both the benchmark and proposed plans, the percentage of registered voters who are black has increased from 49.8 to 54.5 percent since 2000.

Our election analysis establishes that racial bloc voting persists in both parish elections as well as in elections in District 5. In addition, the analysis reveals that there is a consistent level of crossover voting by white persons for black-preferred candidates. The statistical evidence of significant racial polarization is corroborated by the anecdotal evidence obtained from parish residents, including the police jurors, with whom we spoke.

The changes to District 5 in the proposed plan lower the percentage of black persons in the total population, the voting age population, and the number of registered voters in the district significantly. These decreases are such that, based on our analysis, black voters in the proposed district will no longer have the ability to elect a candidate of choice to office. Accordingly, based on the information that we have obtained and our analysis of that evidence, the parish has not carried its burden of showing that its proposed plan does not have a retrogressive effect upon the ability of black voters to elect their candidate of choice.

The determination that benchmark District 5 is an ability-to-elect district is buttressed by the same facts that lead to the conclusion that the parish cannot establish that the proposed plan was not adopted with a discriminatory purpose.

With respect to the city's ability to demonstrate that the plan 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 it has otherwise considered important or controlling in similar decisions. *Id.* at 266-68.

The decision to add the Lakeshore area to District 5 decreased the black percentage of the proposed district's total population, voting age population, and registered voters by more than four percentage points each. Our election analysis indicates the closeness of interracial election contests in the district. This four point (or more) reduction in all of these relevant measures will virtually eliminate the ability of black voters to elect a candidate of choice.

According to the information provided by the parish, its demographer met separately with four white police jurors at the beginning of the redistricting process where they made the most important overall decision regarding the proposed plan, specifically to exclude, for the first time, the prison population from the population process. At that time, the parish also chose to unite

the entire Lakeshore area and move it into District 5. The Lakeshore area, which was split between Districts 1-A and 3 under the benchmark plan, has never been located in District 5 in the past.

There appears to be little, if any, dispute that combining the Lakeshore area into District 5 is tantamount to choosing to reduce its minority voting strength. As a separate community of interest, it is remarkably dissimilar from the Town of Clinton, in which 84.7 percent of District 5's voters live under the benchmark plan. For example, a majority of benchmark District 5's population is black, while the Lakeshore area has a total white population percentage of 79.6 and a white voting-age population of 85.5 percent. Additionally, electoral and census data indicate that residents in the Lakeshore area have a significantly greater level of political participation than those in Clinton.

The parish claims that both the reduction of the black population in District 5 and the addition of the Lakeshore area to it were necessary to prevent it from being under-populated under the proposed plan. Neither of these statements can withstand scrutiny. First, the proposed plan fails to comply with the Constitution's one person, one vote requirement by any measure. Only two of the nine districts fall within a deviation range of plus or minus five percent. Moreover, Districts 4-A and 7 have smaller population totals under the proposed plan than District 5 has under the benchmark plan. If benchmark District 5 was left unaltered in the proposed plan it would have only been the third-least populated district.

Even acknowledging the parish's legitimate interest in bringing District 5's population within constitutionally prescribed limits, the proposed plan did not accomplish that goal. Rather, by adding the entire Lakeshore area, District 5 is now the most over-populated district under the proposed plan, with a population deviation of 8.7 percent greater than the ideal district. The changes to District 5, in sum, did little, if anything to achieve the stated purpose of equalizing population deviations.

The parish could have added population to District 5 without adding the Lakeshore area. They could have either left the area unchanged from the benchmark plan, split between Districts 3 and 1-A or, if the parish wanted to consider the Lakeshore area as a community of interest, they could have moved the entire area into District 1-A. By doing so, the parish could have maintained the same level of minority strength in District 5 and created smaller population deviations both in that district and parish-wide. Benchmark District 5 is surrounded by a total of four districts and is not confined by any parish boundaries, so the district could have expanded in virtually any direction, so long as it did not result in an inappropriate population deviation or retrogression in another district. Additionally, the district expanded to the southwest in the proposed plan, around two majority-black precincts that would have mitigated some of the black population loss.

The only possible conclusion is that the parish's stated rationale for uniting the Lakeshore area in District 5 is pretextual. Accordingly, the parish has failed to identify any legitimate government interest that is served in making these changes to District 5. In the absence of such

an explanation, the parish has failed to establish, as required under Section 5, that the proposed redistricting plan was adopted without a discriminatory purpose.

Taken separately, each of the parish's actions with regard to District 5 was unnecessary. Taken together, they constitute credible evidence that District 5's configuration in the proposed plan was driven by a belief that minority voters have the ability to elect a candidate of choice in the district under the benchmark, and that ability should be eliminated under the proposed plan. These facts preclude the parish from demonstrating that the proposed plan, particularly the newly-configured District 5, was not motivated by a purpose prohibited by Section 5.

Because the creation, realignment, and renumbering of voting precincts that were submitted with the plan are related to and dependent upon the objected-to redistricting plan, the Attorney General will make no determination regarding those changes. 28 C.F.R. 51.

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 East Feliciana Parish plans to take concerning this matter. If you have any questions, you should contact Ms. Kelli Reynolds (202-305-1046), 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*

December 26, 2007

Mr. Brian DeBano
Chief of Staff and Chief Operating Officer
430 West Allegan, 4th Floor
Lansing, Michigan 48918

Mr. Christopher Thomas
Director of Elections
P.O. Box 20126
Lansing, Michigan 48901

Dear Messrs. DeBano and Thomas:

This refers to the relocation and subsequent closure of the Buena Vista Township Secretary of State's branch office ("Buena Vista office") and the photo identification procedures contained in Public Act 71 (S.B. 513) (2005) ("PA 71"), for Buena Vista and Clyde Townships in Saginaw and Allegan Counties, for the State of Michigan, 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 September 18, 2007, request for additional information on September 28, 2007, October 13, 2007, and October 26, 2007. Additional information was received on November 9, 2007, November 27, 2007, December 7, 2007, December 12, 2007 and December 21, 2007.

Buena Vista Office Closure

With relation to the Buena Vista office, we note that there are actually two unprecleared changes that require review under Section 5, the office's relocation and the office's closure. The Department first precleared the creation of a voter registration site at a Secretary of State branch office in Buena Vista on September 13, 1993. While no street address for the Buena Vista office was submitted by the Township, Christopher Thomas, Michigan Director of Elections, indicated in a December 7, 2007 e-mail that the first Secretary of State branch office in Buena Vista was located at 3890 Dixie Highway, Saginaw, MI and existed as early as 1990. Mr. Thomas further explained that this office was relocated to the current address, 4212 Dixie Highway, Saginaw, MI 48601, some time in or around 1999. Our records indicate that this relocation was never submitted for preclearance.

In order for the Department to render a determination on the Buena Vista office closure, the Department must first issue a decision governing the relocation. Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. § 51.22. The December 7 e-mail from Christopher Thomas, however, provides adequate information for the Attorney General to review the relocation. The Attorney General does not interpose any objection to the Buena Vista office relocation that occurred in or around 1999. 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. 28 C.F.R. § 51.41.

Turning to the office closure, the last precleared change is now the relocation of the Buena Vista office to its current location. This is the benchmark by which the office closure is measured. Your contention that the Buena Vista office closure does not constitute a change under Section 5 is contradicted by federal case law. You argue that the Department's guidelines provide that the benchmark for all voting changes is the practice or procedure in force or effect at the time the relevant jurisdiction became covered under Section 5. Under this interpretation, you assert that the office closure does not constitute a change because there was no branch office in Buena Vista when the Township became subject to Section 5. This interpretation of the benchmark standard is incorrect. Federal courts have stated that the benchmark for purposes of defining a change under Section 5 constitutes the last precleared change occurring after the date of coverage. *See Young v. Fordice*, 520 U.S. 273, 281 (1997); *Holder v. Hall*, 512 U.S. 874, 883-84 (1994) (plurality opinion); *Presley v. Etowah County Comm'n*, 502 U.S. 491, 495 (1992); *Kennedy v. Riley*, 445 F. Supp. 2d 1333, 1336 (M.D. Ala. 2006), *appeal pending*, No. 07-77; *Dotson v. City of Indianola*, 521 F. Supp. 934, 943 (N.D. Miss. 1981), *aff'd summarily*, 456 U.S. 1002 (1982); *NAACP v. Georgia*, 494 F. Supp. 668, 677-79 (N.D. Ga. 1980). The Department's guidelines also state that the benchmark by which a change is measured is the "last legally enforceable practice or procedure used by the jurisdiction." 28 C.F.R. § 51.54. Accordingly, the Secretary of State's reliance upon there being no branch office in the Township on the date of Section 5 coverage is misplaced. Indeed, the fact that the Township submitted the creation of a voter registration site at a Buena Vista Secretary of State office in 1993 undermines any argument that the appropriate benchmark is the absence of such an office.

With respect to the Buena Vista office closure, we have carefully considered the information you have provided, as well as census data, comments, and 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. *Georgia v. United States*, 411 U.S. 526 (1973); *see also* 28 C.F.R. § 51.52. "A change affecting voting is considered to have a discriminatory effect under Section 5 if it will lead to a retrogression in the position of the 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." 28 CFR § 50 1.54(a) (citing *Beer v. United States*, 425 U.S. 130, 140-42 (1976)).

Several factors establish that the State has failed to sustain its burden of showing that the closure of the Buena Vista office will not have a retrogressive effect on minority electoral participation. First, the Buena Vista office closure will impair the ability of minorities to register to vote. The Buena Vista office conveniently allows citizens to register to vote or update their voter registration while using other Secretary of State services. While you have argued that there are numerous alternative registration locations throughout the County, registration statistics in your submitted materials indicate that Secretary of State branch offices are the primary source of voter registrations for Buena Vista residents. Since 2002, Secretary of State branches have accounted for 79.13% of total registrations for the Township, approximately four times the number of registrations as all other sources combined. These numbers demonstrate that closure of the Buena Vista office, which is the only branch office in a majority-minority township in the County, will significantly lower minority registration.

The next closest Secretary of State branch office for Buena Vista residents is the Saginaw Northwest office, an 18-mile round-trip from the Buena Vista office. Our analysis indicates that travel to the Saginaw Northwest office for Buena Vista residents will be significantly more difficult than visiting the current location. Public transportation between the Buena Vista branch office and the Saginaw Northwest office is time-consuming. Our analysis indicates that a round-trip between the two offices on public transportation would take a minimum of one hour and 40 minutes, assuming no delays. Additionally, contacts in Buena Vista have informed us that the drive to the Saginaw Northwest branch entails travel along highly congested streets.

The Frankenmuth and St. Charles branch offices are not viable alternatives to the Saginaw Northwest office. These offices are even farther away from Buena Vista Township in more rural parts of the county. According to submitted materials, the Frankenmuth office is a 24-mile round-trip from the Buena Vista branch, and the St. Charles office is a 42-mile round-trip from the branch. Both offices are in townships in which every census block has less than 35% black or Latino representation.

Second, the closure of the Buena Vista office will make it more difficult for minorities in Buena Vista who wish to comply with PA 71's ID requirement by showing photo identification, in lieu of signing an affidavit attesting to their identity, to obtain Michigan IDs. The Secretary of State's office is the only issuer of Michigan driver's licenses and personal identification cards ("PIDs"). Thus, closing the Buena Vista branch will require Buena Vista residents, 55.6% of whom are black and 9.6% of whom are Latino, to visit one of the other County or state branches to obtain an ID.

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 the closure of the Buena Vista office.

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 closure of the Buena Vista Township Secretary of State's branch office continues to be legally unenforceable. *Clark v Roemer*, 500 US 646 (1991); 28 C.F.R. § 51.10.

Photo ID Requirement

With respect to the photo identification procedures contained in PA 71, we note that you have supplemented your submission with materials reflecting the Secretary of State's interpretation and planned implementation of the ID requirement. According to the materials you provided, acceptable identification under the new requirement includes: a Michigan driver's license, a Michigan chauffeur's license, a Michigan PID, a current driver's license or personal identification card from another state, a current federal or state government-issued photo identification card, a current U.S. passport, a current military photo identification card, a current student photo identification card or a current tribal photo identification card. Your materials state that individuals without one of the acceptable forms of identification, regardless of whether they do not have identification at all or merely did not bring it to the polls, will be able to vote on a regular ballot if they sign an affidavit affirming their identity. Your materials confirm the fact that signing the affidavit in lieu of showing identification is not an independent basis for challenging a voter.

The Attorney General does not interpose any objection to the photo identification requirement and accompanying implementation procedures. 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 changes. In this case, where our decision not to object rests in part on the detailed implementation procedures you provided, and on effective education of poll workers and voters as to the new procedures, any change from these procedures must be precleared under Section 5. Further, to the extent that PA 71 includes provisions that are enabling in nature, any changes affecting voting that are adopted pursuant to this legislation require Section 5 review. *See* C.F.R. § 51.15.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Secretary of State plans to take concerning this matter. If you have any questions concerning this letter, you should call Eric Rich (202-305-0107), an attorney in the Voting Section.

Sincerely,

Grace Chung Becker

Grace Chung Becker
Acting Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

DEC 11 2001

J. Lane Greenlee, Esq.
P.O. Box 430
Winona, Mississippi 38967-0430

Dear Mr. Greenlee:

This refers to the cancellation of the June 5, 2001, general election for the Town of Kilmichael in Montgomery County, Mississippi, 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 21, 2001, request for additional information on October 12, 2001; supplemental information was received on November 26 and 27, 2001.

We have considered carefully the information you have provided, as well as census data, and comments and information from other interested parties. As discussed further below, I cannot conclude that the town's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the cancellation of the June 5, 2001, general election.

According to the 2000 Census, the Town of Kilmichael has a population of 830, of whom 52.4 percent are black. Since 1990, black residents have become a majority of the town's population and, recently, a majority of its registered voters.

The town is governed by a mayor and a five-member Board of Aldermen, all of whom are elected at the same time to four-year terms, under an at-large system with a plurality vote requirement. Currently, the mayor and all five board members are white. Only one black person has served on the board; in fact, since 1965, only four other black candidates have ever run for board positions. None of these four was successful. Until 2001, no black person had sought the office of mayor.

The office of mayor and all board seats were to be filled at the June 5, 2001, general election. During the qualification period for this election, for the first time a significant number of black candidates qualified for both races. In the Board of Aldermen race, there were ten candidates running for the five board positions, four of whom were black. In the mayoral race, three individuals, one of whom was African American, qualified. Three weeks before the election, and following the close of candidate qualification, the town sought to cancel the election. On May 15, 2001, with no notice to the community, the board unanimously voted to cancel the general election. The town obtained approval from the town election commission and from a state circuit court for this action. In the Matter of the General Election for Mayor and Aldermen of the Town of Kilmichael of June 2001, Case No. 2001-0073CV-L (Cir. Ct. Montgomery Cty. Miss. May 21, 2001). The following day, the town advised the candidates of the court's decision and provided them with copies of the court order.

The stated purpose for the town's action was to develop a single-member ward system for electing town officials. However, our analysis of the information provided by the town, taken as a whole, has caused us to conclude that the town has not established that its decision was motivated by reasons other than an intent to cause retrogression in minority voting strength.

A significant factor in our analysis is the context in which the town reached its decision. First, the decision to cancel the election came only after black persons had become a majority of the registered voters and the release of census data indicated that black persons were now a majority of the population in the town. Second, the decision occurred only after the qualification period for the election had closed, and it became evident that there were several black candidates for office, and that under the existing at-large electoral method, the minority community had the very strong potential to win a majority of municipal offices, including mayor.

The town's purported non-racial rationales for the decision do not withstand scrutiny. First, the town points to a conversation, which occurred in February or March of this year, between former aldermanic candidate Robert Hamer and one of the current board members. However, there is no evidence that Mr. Hamer advocated any change in the upcoming election date. Furthermore, the minutes of the March 6, 2001, meeting in which Mr. Hamer's request is noted reflect the board's position not only that a decision on the change could be postponed, but also that any discussion on the change was not of immediate import.

It thus appears that the board did not focus on changing the method of election until it became clear that the minority community potentially could win the mayoral seat as well as four of the five aldermanic seats.

Second, the town points to federal litigation filed in April as a reason to cancel the election. One aspect of that litigation concerned the effect that the recent release of the census data would have on the municipalities that elected its governing bodies from districts. Mississippi State Conference, NAACP v. Amory, Mississippi, Civil Action No. 01-CV-98 (N.D. Miss. Apr. 25, 2001). However, that part of the litigation had no relevance to the town's existing at-large method of election. The litigation also alleged that the at-large method of election violated federal law in several other identified municipalities, but Kilmichael was not named as a defendant or a potential defendant in the litigation. Thus there was no imminent danger of litigation that would lead the town to cancel the election. Finally, we note that election-related federal litigation has been occurring in Mississippi for approximately 30 years.

In addition to the town's failure to establish the absence of a discriminatory purpose, we have concluded that it also has failed to establish that the change does not have a prohibited effect under Section 5. Canceling an election in which the minority community would be able to exercise effectively the electoral franchise - especially one in which there is a significant number of minority candidates qualified for office and black voters are a majority of registered voters - is retrogressive. Had the election been held, blacks would have exercised the opportunity to attempt to elect candidates of their choice to the mayoral and board seats. The cancellation of this election leaves black citizens worse off because of the denial of that opportunity.

Under the Voting Rights Act, a jurisdiction seeking to implement a proposed change affecting voting must establish that, in comparison with the benchmark standard, 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). 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). 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 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 cancellation of the June 5, 2001, general election.

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.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of Kilmichael plans to take concerning this matter. If you have any questions, you should call Mr. David H. Harris, Jr. (202-305-2319), an attorney in the Voting Section. Refer to File No. 2001-2130 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

Enclosure

U. S. Department of Justice

Civil Rights Division

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

MAR 2 4 2010

Margarette L. Meeks, Esq.
Special Assistant Attorney General
P.O. Box 220
Jackson, Mississippi 39205-0220

Dear Ms. Meeks:

This refers to Chapter No. 469 (H.B. 877) (2009), insofar as it requires candidates for county boards of education and the board of trustees of certain municipal and special municipal separate school districts embracing an entire county to be elected by a majority of the votes cast in an election and to require a run-off election three weeks after the election if no candidate receives a majority of the votes, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your partial response to our August 28, 2009, request for additional information on October 28, 2009, and a partial response to our November 24, 2009, follow-up request for additional information on January 23, 2010.

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 litigation and previous submissions from the state and its subjurisdictions that indicate the prevalence of racially polarized voting in Mississippi elections. 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 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,* 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 changes.

According to the 2000 Census, the State of Mississippi has a total population of 2,844,658 people, of whom 1,031,818 (36.3%) are African-American. The total voting age population is 2,069,471 people, of whom 682,789 (33%) are African-American. According to the American Community Survey (2006-2008), the state's total population is estimated to be 2,918,790, of whom 1,083,528 (37.1%) are African-American.

A change to a majority-vote requirement does not, *per se*, have a retrogressive effect on the ability of minority voters to exercise their electoral franchise effectively and to elect candidates of choice to office. Rather, such a determination depends on an individualized analysis of the affected jurisdiction's electoral structure, the racial composition of its electorate, and a review of its electoral history. The state's initial submission, however, contained only the statement that the change from a plurality to a majority-vote requirement would have neither the purpose nor the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. It did not provide a factual basis on which to conclude that the proposed changes in Chapter No. 469 met the standards under Section 5 in each of the affected school districts.

On August 28, 2009, we made a written request for additional information from the state designed to overcome the submission's shortcomings. The request sought information of the kind and character we typically request for the review of a change from a plurality to a majority-vote requirement. On October 28, 2009, we received the state's first response to our request. It was incomplete and, for the most part, not responsive to our requests. On November 24, 2009, we sent a follow-up letter identifying those items to which the state had not specifically responded and those items for which the state's responses were not responsive or included information that appeared to be not relevant.

On January 23, 2010, we received a further response to our August 28, 2009, request. Although this letter did provide some of the requested information, the state again failed to provide the critical items of information: the electoral schemes for the affected school districts, the demographics of those districts, and the information necessary to analyze voting behavior in each of the districts. In its January 23, 2010, response to our follow-up request, the state informed us that it did not have any additional information concerning the development or rationale for the change and that limited resources precluded providing the information necessary to provide the racial identity of school board candidates. The response was silent, however, on the request for the demographics and electoral schemes of the affected districts. In an effort to obtain enough information to make a determination with regard to at least some of the districts, we inquired if the state was able to provide any of that information. State officials responded that they would not provide that information either. The failure to provide this critical information precludes us from differentiating between those school districts where we could promptly determine if the change meets Section 5 standards from those districts where the question is more complex, requiring much closer scrutiny.

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.. The legislation mandates a state-wide, majority-vote requirement. As a result, the state, rather than each affected district, is responsible for providing sufficient information to establish that such a change meets the statutory burden in each jurisdiction. We believe that state has had more than an ample

opportunity to provide the requested information necessary for an analysis of the proposed changes under Section 5. Because the state has elected not to provide certain information crucial to the analysis, the Attorney General is unable to conclude that the proposed changes have neither a discriminatory purpose nor will have a discriminatory effect. *Evers* v. *State Board of Elections*, 327 F. Supp. 640 (S.D. Miss. 1971).

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 proposed changes.

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 the State of Mississippi plans to take concerning this matter. If you have any questions, you should call Mr. Robert 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*

October 4, 2011

Tommie S. Cardin, Esq.
Butler, Snow, O'Mara, Stevens, & Cannada
Suite 1400
1020 Highland Colony PKWY
Ridgeland, MS 39157

Dear Mr. Cardin:

This refers to the 2011 redistricting plan for the board of supervisor and election commissioner districts for Amite County, Mississippi, 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 June 28, 2011, request for additional information on August 5, 2011; additional information was received through September 24, 2011.

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 2011 redistricting plan for the board of supervisors and the county election commission.

According to the 2010 Census, the county has a total population of 13,131 persons, of whom 5,414 (41.2%) are African American. Of the 10,176 persons of voting age, 4,032 (39.6%) are black persons. The board of supervisors is elected from five single-member districts; election commissioner districts must be coterminous with the supervisor districts. Although not required, the county school board has used the same districts.

The voting change at issue must be measured against the benchmark practice to determine whether it would "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer* v. *United States*, 425 U.S. 130, 141 (1976). Under the benchmark plan, there are two districts, Districts 2 and 3, in which minority residents have the ability to elect a candidate of choice to office. African American voters in District 2 have consistently elected candidates of their choice to the board of

supervisors, the election commission, and the school board. African American voters in District 3 have consistently elected candidates of their choice to the election commission and the school board. In terms of demographics, black persons comprise 55.3 percent of District 2's voting age population and 53.9 percent of the total voting age population in District 3.

The proposed plan slightly increases the black population in District 2, maintaining the ability to elect for minority voters that existed in the benchmark plan. The proposed plan reduces the black population levels in District 3 to the extent that our analysis indicates the existing ability to elect in the benchmark plan has been eliminated. The county has informed us that ability to elect now exists in proposed District 5 because it has a similar demographic profile. Our determination as to whether a district has the ability to elect is not based on census numbers in isolation. *Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act*, 76 Fed Reg. 7470, 7471 (2011). We look to the voting history in both the county and in the district at issue. Such considerations are especially pertinent to our analysis of proposed District 5 here.

Our election analysis indicates that black voters in proposed District 5 turnout to vote at lower levels and exhibit lower levels of electoral cohesiveness than is present in benchmark District 3. We also note there has been a nearly complete lack of any minority political activity for the past two and half decades in the area that would comprise proposed District 5. This means potential candidates for elective office as well as the necessary accompanying support structure for a campaign are not currenly present in this area and would need to be developed. This contrasts with the existing political activity and structure that is present in benchmark District 3. The absence of such a structure would have a negative impact on the ability of minority voters to participate effectively in the political process. In view of all these factors, the county has not produced sufficient evidence to conclude that the proposed plan is not retrogressive.

With respect to the county's ability to demonstrate that the plan 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 it has otherwise considered important or controlling in similar decisions. *Id.* at 266-68.

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 a discriminatory purpose. The shift of a district in which black voters had the ability to elect a candidate of choice from District 3 to District 5 was not necessary to adhere to the county's stated redistricting principles or any other traditional redistricting criteria. And the retrogressive impact of the plan was easily avoidable, as demonstrated by alternative Plan 5, which the supervisors considered, but did not adopt.

In addition, there is evidence that the shift of minority population from District 3 to District 5 was motivated by a desire to reduce the minority population and minority voting strength in District 3. There was an increasing likelihood that, absent the changes in the proposed plan, black voters would elect a candidate of choice in District 3. The evidence we have obtained – including from interviews with the decision makers in the redistricting process – indicates that the decision to reallocate minority population into District 5 and out of District 3 was intended, at least in part, to avoid that result. The fact that District 5 does not provide minority voters with an ability to elect candidates of choice serves only to support our determination concerning the county's motivation in this regard. *LULAC* v. *Perry*, 548 U.S. 399 (2006).

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.

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 Amite 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

Washington, D.C. 20530

APR 3 0 2012

Everett T. Sanders, Esq.
City Attorney
City of Natchez
P.O. Box 565
Natchez, Mississippi 39121

Dear Mr. Sanders:

This refers to the 2011 redistricting plan for the City of Natchez in Adams County, Mississippi, 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 February 21, 2012, request for additional information on February 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 city's 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 city's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the city's proposed 2011 redistricting plan.

According to the 2010 Census, the city's total population is 15,792, of whom 9,237 (58.5%) are black; its voting age population is 12,054, of whom 6,522 (54.1%) are black. The city is governed by a mayor, elected at-large, who votes only in the case of a tie, and a six-member board of aldermen, who are elected from single-member wards by majority vote to serve four-year concurrent terms.

Under the benchmark plan, black voters have demonstrated the ability to elect candidates of choice in Wards 1, 2, and 4, with black voting age population percentages of 68.9, 97.5, and 69.1, respectively. In Ward 5, black persons constitute 57.6 percent of the total population and 52.6 percent of its voting age population, but have not elected a candidate of choice in aldermanic elections.

The proposed plan retains Wards 1, 2, and 4 as ability-to-elect wards. The black voting age population percentage in each of these three wards increases as compared to the benchmark. Meanwhile, the black total and voting age populations in Ward 5 are reduced by 5.3 and 6.6 percentage points, respectively, resulting in Ward 5 losing the black majority in its voting age population and decreasing its black total population to 52.3 percent.

With respect to the city's ability to demonstrate that this change was adopted without a prohibited purpose, the starting point of our analysis is the framework established in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). There, the Supreme Court provided a non-exhaustive list of factors that bear on the determination of discriminatory purpose, including the 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 it has otherwise considered important or controlling in similar decisions. *Id.* at 266-68.

We start with the city's redistricting history, which shows a pattern of the city modifying ward lines to limit black voting strength. On February 21, 1984, the Attorney General interposed an objection under Section 5 to the city's proposed post-1980 redistricting plan because it made numerous unnecessary population shifts that artificially limited black voting strength in the city. That plan maintained black percentages at levels identical to the benchmark in Wards 1 and 4, even though adherence to non-racial redistricting criteria would have resulted in an increase in black voting strength in each.

Over the past several decades, the black population in both the city as a whole, as well as the area encompassing Ward 5, has been increasing. Indeed, each time the decennial Census data has been released since 1990, black persons in Ward 5 have comprised a significant majority of the total population in the benchmark district. And in each redistricting cycle since then, the city has taken steps to reduce the black population share in Ward 5. The city's 1992 redistricting plan reduced the black population percentage in Ward 5 from 54.9 percent in the benchmark to 49.3 percent in the proposed plan. The city's 2002 redistricting plan also reduced the black population in Ward 5 from 56.3 percent in the benchmark to 48.3 percent in the proposed plan. And this submission, the city's 2011 redistricting plan, follows that same pattern and reduces the black total population in Ward 5 from 57.6 percent to 52.3 percent, with a resulting reduction in black voting age population from 52.6 percent to 46.0 percent. Most significantly for the instant analysis, benchmark Ward 5 was within constitutional population limits after the 2010 Census and did not need to be changed at all. Because it appears that the city has intentionally and unnecessarily reduced the black voting age population in Ward 5 under circumstances that suggest the black population in Ward 5 would otherwise have been on the verge of exercising an ability to elect their candidates of choice, we cannot conclude that the city has met its burden of demonstrating the absence of any discriminatory purpose.

The city's rationale for the change before us does not withstand scrutiny. According to the city's demographer, black population had to be moved from Ward 5 in order to maintain the black population percentages in Wards 1, 2, and 4 so as to avoid retrogression. That claim is a misapplication of the retrogression standard, which does not operate as a categorical prohibition on any reduction in the black population percentage in an ability-to-elect ward. Rather, as both the text of Section 5 and the Attorney General's procedures for its administration make clear, the retrogression standard in this context prohibits those changes that have the effect of diminishing, on account of race, the ability of any citizens to elect their preferred candidates of choice. 42 U.S.C. 1973c(b); 28 C.F.R. 51.52. It is not plausible to contend that adding black population to the three existing ability-to-elect wards in the benchmark plan – especially Ward 2, with a 97.5 percent black voting age population – was necessary to avoid retrogression in those wards; our analysis has determined that each could experience a decrease in the black share of the voting age population while still maintaining their ability-to-elect status. Indeed, in past city elections, black voters have demonstrated an ability to elect candidates of their choice in wards with a black voting age population of 67 percent.

As we have indicated in our *Guidance Concerning Redistricting Under Section 5 of the Voting Act,* 76 Fed. Reg. 7470, 7472 (Feb. 9, 2011), we may devise an illustrative plan as part of our analysis. We have done so in this instance. The illustrative plan we have developed maintains Wards 1, 2, and 4 at similar or higher black population percentage levels than existed in the benchmark, maintains Ward 5 at its benchmark level, and achieves a smaller overall population deviation range than the adopted plan. This illustrative plan demonstrates that the city's explanation – that reductions in the black population share in Ward 5 were necessary to maintain the black population share in the three ability-to-elect districts – is pretextual. The city's demographer was in fact presented with an alternative plan by the Natchez Chapter of the NAACP that not only maintained the black population shares in Wards 1, 2, and 4, but also increased the black population share in Ward 5 to ability-to-elect levels, so the city was aware that such a result was feasible.

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 will have 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 the city's burden has been sustained in this instance.

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 the City of Natchez 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*

December 3, 2012

Kenneth Dreher, Esq.
111 Hillmont Circle
Clinton, Mississippi 39056

David Wade
Senior Planner
P.O. Box 4935
Jackson, Mississippi 39296-4935

Dear Messrs. Dreher and Wade:

This refers to the 2012 redistricting plan for the City of Clinton in Hinds County, Mississippi, 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 October 1, 2012, follow-up request for additional information on October 3; additional information was received on October 11 and November 30, 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 city'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 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 city's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I object to the 2012 redistricting plan for the board of aldermen.

The board is comprised of seven aldermen, six of whom are elected from single-member wards and one of whom is elected at large. According to the 2010 Census, the city has a total population of 25,216 persons, of whom 8,603 (34.1%) are black, and a voting-age population of 19,011 persons, of whom 5,907 (31.1%) are black. Census data also indicate the city's total black population increased from 17.1 percent in 1990 to 34.1 percent in 2010.

Our analysis of the city's ability to demonstrate that the plan was adopted without a prohibited purpose is guided by the framework established in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). There, the Court provided a non-exhaustive list of factors that bear on the determination of discriminatory purpose, including the 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 it has otherwise considered important or controlling in similar decisions. *Id.* at 266-68.

We look first at the racial impact of the proposed plan. Under the city's benchmark redistricting plan, adopted in 2005, none of the six wards provide black voters with the ability to elect candidates of choice to office. Under that plan, six minority candidates have run for various municipal offices and all lost. The proposed plan, like the benchmark plan, contains no districts in which African American voters have the ability to elect candidates of choice, notwithstanding that the African American population share in the city has doubled in the past two decades to over 34 percent. Despite this significant population increase, the city adopted a proposed plan in 2012 that continues to provide minority voters with no ability to elect a candidate of choice in any of the six wards, and does so by unnecessarily fragmenting minority population concentrations, with the result that three wards have black voting age populations between 37 and 43 percent.

According to the city's submission, it is not possible to devise a constitutionally valid ward in which African American voters have the ability to elect candidates of choice to office. However, our own analysis disproves this concern. There are significant minority population concentrations that now exist in the city, particularly in its southeast corner. In light of this population distribution, we were easily able to draw an illustrative redistricting plan in which this area could serve as the core of a compact ward with a black total population percentage of over 59 percent, and a black voting age population percentage of nearly 56 percent. Consistent with the city's electoral history, the experience of the city's demographers, and the views of knowledgeable members of the minority community, such a ward would provide black voters an ability to elect a candidate of choice. And such a map would pose no conflict with constitutional requirements or with the city's neutral redistricting criteria: the proposed ward is compact in shape, the configuration of all wards stays relatively unchanged from the proposed plan, and no incumbents would be paired or moved. *Guidance Concerning Redistricting under Section 5 of the Voting Rights Act,* 76 Fed. Reg. 7470, 7472 (Feb. 9, 2011).

Moreover, there is credible evidence that precludes the city from establishing that the sequence of events leading to the adoption of the proposed plan was not purposely designed to avoid the creation or public consideration of a plan that contained an ability-to-elect ward for African American voters. At the board's first meeting to consider the 2012 redistricting plan, on April 3, 2012, two members of the local NAACP requested that the board postpone a decision to allow that organization sufficient time to retain a demographer to determine whether it was possible to create a ward in which black voters had the ability to elect a candidate of choice. The board did stay its vote for two weeks. On April 17, however, when one of these NAACP members requested additional time because of the difficulty in obtaining the necessary assistance, the board denied the request and proceeded to adopt the proposed plan. The city has

not provided any "objectively verifiable, legitimate reasons" for the refusal to grant another extension. *City of Richmond* v. *United States*, 422 U.S. 358, 384 (1975) (Brennan, J., dissenting). Significantly, the city's submission notes there were "no factors" requiring the board to adopt the proposed plan on that day – and indeed, at that point a full eleven months remained until the March 2013 candidate qualifying deadline for the next municipal election. Additionally, at the time of the plan's adoption, the city was mulling a formal challenge to certain census data, which, if successful, might have necessitated drawing a new plan.

Some city officials have asserted the board was unaware that the basis for the delay requested by members of the NAACP was to determine the feasibility of creating an alternative plan with a ward in which black voters constituted a majority of the voting age population. But the city's own demographers spent the time period between the April 3 and April 17 board meetings attempting to create such a plan, which undermines any assertion that the city was ignorant of the basis for the requested delay. And the city's statement is also directly contradicted by media accounts of the April 3 board meeting, which reported that one of the NAACP members "appeared before aldermen April 3, telling them that he needed more time to get maps drawn up that would include a majority black ward." Ruth Ingram, *No majority black ward possible, aldermen say of redistricting*, Jackson Clarion-Ledger, April 19, 2012, at 4B.

Given this unusual sequence of events, we are left with the conclusion that the city unnecessarily rushed the redistricting process to avoid considering an alternative plan that would allow black voters the ability to elect a candidate of choice in one ward. This conclusion is reinforced by the city's publicity of the process, which consisted of nothing more than a single legal notice. The NAACP became aware of the April 3 meeting only through word-of-mouth, and not through any efforts of the city to solicit views from or even notify the minority community that the proposed redistricting map was under consideration.

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 will have 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 the city's burden has been sustained in this instance.

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 city 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 the City of Clinton plans 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. 20035

JUL 23 2002

Dwight W. Snow, Esquire
Post Office Box 397
Dunn, North Carolina 28335

Duncan B. McCormick, Esquire
Post Office Box 1629
Lillington, North Carolina 27546

Dear Messrs. Snow and McCormick:

This refers to the 2001 redistricting plans for the board of commissioners and board of education in Harnett County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your initial response to our May 14, 2002, follow-up request for additional information on May 24, 2002; supplemental information was received through July 16, 2002.

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 county's 2001 redistricting plan.

According to the 2000 Census, black persons represent 22.6 percent of the county's total population and 20.7 percent of its voting age population. The county's current method of electing the five members of both the board of commissioners and board of education from five single-member districts resulted from a 1989 consent decree entered in Porter v. Stewart, No. 89-950 (E.D.N.C.), which alleged that the county's then-existing at-large methods of election violated Section 2 of the Voting Rights Act. Under the plans used by the county since 1989, black persons constituted a majority of both the total and the voting age population in one of the five districts, District 1. According to your submission, under 2000 Census data, District 1 in the 1992 plan is 52.7 percent black in total population and

50.8 percent black in voting age population and is underpopulated by 20.4 percent. This plan serves as the benchmark for our analysis.

In contrast to the benchmark plan, the proposed 2001 redistricting plan contains no district in which black persons are a majority, in either total or voting age population. According to the information you provided, the black population percentage of the total population in proposed District 1 drops six percentage points to 46.6 percent, and the voting age population by seven points to 43.9 percent. For the reasons set forth below, we believe that, within the context of electoral behavior in the county and the availability of alternative redistricting plans, the county has not established that this reduction will not result in a retrogression in the ability of minority voters to exercise their electoral franchise.

The election returns provided by the county suggest that since 1990 the candidates elected in District 1 to both boards have received strong cohesive support from black voters as well as support from white voters. The county has held elections in 1990, 1994, and 1998 in District 1; each of these elections resulted in black candidates being elected to both boards from District 1. Our review also shows that some interracial elections were closely contested. For example, in 1990 and 1994, two of the three years in which the District 1 seat for the board of commissioners was up for election, a black candidate won the Democratic primary election with 54 to 55 percent of the vote, at a time when District 1 was roughly 54 percent black in voting age population. As a result, the proposed seven point reduction in the black voting age percentage in District 1 casts significant doubt as to whether, in similar, closely-contested elections over the next decade, black voters would retain the same electoral ability that they do in the benchmark plan, particularly if the current incumbents in District 1 decline to run again for office.

Moreover, during the redistricting process neither board considered any redistricting plan in which black persons would remain a majority of either the total or voting age populations in District 1. We understand that counsel for the Porter plaintiffs, however, subsequently provided county officials with two alternative plans. In the second of these plans, blacks persons remain a majority of both the total and voting age populations, while also complying with one-person, one-vote requirements and other constitutional restrictions. That plan also maintains all present incumbents in their districts, is not dramatically different from the existing plan, and appears to be less unusual in overall design than the proposed plan.