U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 19, 1998

George W. McHugh, Esq.
102 East Berard Street
St. Martinville, Louisiana 70582

Dear Mr. McHugh:

This refers to your request that the Attorney General reconsider and withdraw the October 6, 1997 objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to the 1997 councilmanic redistricting plan for the City of St. Martinville in St. Martin Parish, Louisiana. We received your request on August 19, 1998; supplemental information was received on October 13, 1998.

We have reconsidered our earlier determination on this matter based on information you have advanced in support of your request, along with 1990 Census data, and other information in our files and comments received from other interested persons.

This request for reconsideration represents the city's fourth effort, following the 1990 Census, to obtain preclearance for a redistricting plan. As you know, on November 9, 1992, an objection was interposed to the city's 1991 redistricting plan primarily because, in the context of an apparent pattern of racially polarized voting in local elections, the plan would have lessened the ability of black voters to elect candidates of choice by reducing the black population percentage in District 3 from more than 70 percent black to 61 percent black, while maintaining two districts (Districts 4 and 5) with black population percentages of 99 and 84 percent black. Following this objection, the city in 1993 submitted a second redistricting plan that reduced the black population in District 3 to 66 percent, while maintaining high concentrations of black population in adjacent Districts 4 and 5. The city withdrew this plan from Section 5 review after we requested additional information. In 1997, the city submitted a third redistricting plan based not upon 1990 Census, but upon a 1996 special census commissioned by the city. According to the city's special

census, there was a decline in the city's overall population, a a slight increase in the city's overall black population percentage and a decrease in the black population percentage in existing District 3 to 62 percent. When compared to the 1997 plan using the special census statistics, the black percentage in District 3 increased to 64 percent, while the black population percentages in Districts 4 and 5 remained high at 99 and 84 percent.

In interposing the October 6, 1997 objection, we determined that the city had not established that the results of the 1996 special census it conducted to support the use of its plan were reliable. Therefore, we used 1990 Census data in connection with our determination regarding the 1997 plan. We noted that three of the five council districts under the existing plan using the 1990 Census data have black population majorities of 70 percent or better and would seem to provide black voters with an opportunity to elect their candidates of choice. In the context of an apparent pattern of racially polarized voting in local elections, and using 1990 Census data as the only reliable data available, we determined that the proposed plan would have lessened the ability of black voters to elect candidates of choice by reducing the black population percentage in District 3 from more than 70 percent black to 59 percent, while retaining two districts (Districts 4 and 5) with very high percentages of black population at 97 and 86 percent. We also informed you that there appeared to be a variety of readily discernable redistricting options that would allow the city to correct the existing malapportionment while preserving black political opportunity in District 3, with no significant reduction in black voting strength in Districts 4 and 5.

In the absence of a precleared, properly apportioned redistricting plan for use in city council elections, we understand that since 1994, incumbent councilmembers have been holding over and that no new district-based elections have been held since 1990. Rather than submit a redistricting plan that addresses the concerns pointed out in our objections to both the 1991 and 1997 plans, however, the city has chosen to request reconsideration of the 1997 objected-to plan.

In your request for reconsideration, you withdraw reliance on the 1996 special census and urge us to reevaluate the proposed plan with other statistical data. First, you propose that we evaluate the 1997 plan using 1990 Census data. You suggest, however, that the benchmark against which the 1997 plan should be measured be adjusted to include population annexed into the city since 1990 and added to District 3. When you do so, the black population percentage for existing District 3 drops to 66.5 percent, which is a decrease of approximately 6 percentage points from the 1990 Census. When you compare the black percentage in

this adjusted District 3 to the 1997 plan for this district (using the 1990 Census data that you now provide), the black percentage drops another 5 percentage points to 61.4 percent black, while adjacent Districts 4 and 5 remain heavily black (98 and 86 percent black, respectively). However, if no adjustments are made to the population for existing District 3, your own figures indicate a decrease in the black population percentage for District 3 in the 1997 plan of more than 10 percentage points.

While we are aware that the city has obtained preclearance for certain areas annexed since 1990, we are also aware that preclearance has not been obtained for the designation of the bulk of this population to city council districts. Hence, the benchmark plan includes approximately 18 persons designated post-1990 to majority-white District 1, but it does not include more than 100 white persons the city would now like to designate to existing District 3 for purposes of comparing the 1997 plan; had

decrease, but an increase in black registration for District 3 in the 1997 plan. Using the information you initially provided, we were not able to replicate your results of estimated voter registration for the 1997 plan. When we consulted your demographers regarding the source of these figures, it appeared that these estimates were calculated based on the 1996 special census which we had found unreliable in connection with our October 6, 1997 objection.

On October 13, 1998, corrected estimates of voter registration were provided to us for the 1997 plan, which showed an estimated decrease in the black registration percentage for District 3 of at least 3 percentage points to 60.3 percent black. We note that the reduction in the black registration percentage for District 3 might well be greater, however, when comparison is made to registration statistics for existing District 3 that do not include registered voters residing in the post-1990 annexed area discussed above.

Therefore, whether comparison is made based on 1990 Census data or voter registration data and estimates, and whether or not undesignated post-1990 annexed population is included in the benchmark, the 1997 plan appears to unnecessarily reduce black voting strength in District 3 to a level likely to worsen the opportunity of black voters to elect candidates of choice to the city council.

Finally, although you do not appear to dispute the existence of polarized voting in municipal elections, you posit in your reconsideration request that black voters, despite polarization in voting, are at fault for their inability to elect candidates of choice in recent citywide elections. You appear to suggest that if black voters exhibited the same extreme level of bloc voting as whites, they could elect their candidates of choice. Based on our analysis of these elections, we do not reach a similar conclusion. Voting in St. Martinville appears highly polarized, and disparities persist between black and white voters in terms of turnout. Under these circumstances, a reduction in the black population percentage in District 3 to 61.4 percent black as the city suggests (or 60.3 percent black in registration) is likely to worsen black political participation opportunities in a manner prohibited by Section 5. See Beer v. United States, 425 U.S. 130, 141 (1976).

While we are not unmindful of the city's interest in ensuring that elections for city council can be held, that interest must be exercised in compliance with the requirements of federal law. Because you have not provided any additional relevant information or legal analysis in support of your recent request that would impact upon our conclusion as to the purpose or effect of the submitted change, I remain unable to conclude

that the City of St. Martinville has carried its burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.48). Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the 1997 redistricting plan.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. See 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 St. Martinville plans to take concerning this matter. If you have any questions, you should call Valerie Olson (202-305-4207), an attorney in the Voting Section.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division