

New Orleans

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STATEMENT OF TESTIMONY

Submitted by

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To the

LOUISIANA HOUSE OF REPRESENTATIVES

HOUSE AND GOVERNMENTAL AFFAIRS COMMITTEE

February 17, ~~2010~~ 2011

Good Evening. My name is Tracie L. Washington, and I am the Director of The Louisiana Justice Institute. The Louisiana Justice Institute is a non-profit legal advocacy organization and law firm that fosters and supports social justice campaigns for impoverished communities and communities of color throughout Louisiana. Since the beginning of our work, during the aftermath of Hurricanes Katrina and Rita, our community-based staff has worked throughout Alabama, Mississippi, Texas and Louisiana to bring information, strategy solutions and new media to blatant attacks on human dignity and to work toward achieving the long-term goal of rebuilding and restoring the Gulf Coast to a state better than what existed before 2005. I am honored to appear at today's public meeting and to provide remarks this afternoon on the redistricting process in Louisiana.

When Hurricane Katrina struck the Gulf Coast on August 29, 2005 and the levees broke in New Orleans, it did more than reveal the unimaginable scope of the destruction left behind and the work left to rebuild this magnificent city. As the world watched an unimaginable horror, the curtain were pulled back to reveal the gross inequities in the Gulf Coast. It did not go unnoticed that the thousands of individuals abandoned as the flood waters rose, were the poor and disenfranchised individuals—disproportionately, they were African Americans. For certain, the thousands of African Americans that were displaced by Hurricanes Katrina & Rita never imagined that over five years later, they would still be unable to return home.

The faces of New Orleans has changed—the city is whiter, public housing has been torn down, and what little affordable housing remains, cannot begin to accommodate the thousands of low-income displaced New Orleans' residents dispersed throughout the country.

Yet, the cry for democracy continues unabated. Displaced and disenfranchised citizens search for hope that their voices will be heard in this redistricting process and in the planning process for rebuilding our city. The thread that binds citizens of color and poor people in our parish is the spirit of shared experiences during the storm and our road home—this is our community of

interest—a community that should be kept intact within a district. (*see* discussion of communities of interest below). There is a need to protect the interest of the individuals who lost so much during and after Hurricanes Katrina and Rita—to not do this would be to revisit the 10 days post-Hurricane Katrina when the world watched and the residents of New Orleans waited for help that arrived too late or not at all. We demand the opportunity to participate in a fair and open redistricting process and draw districts that will protect our right to elect candidates of our choice.

Historically, the redistricting process in Louisiana has been fraught with attempts to dilute the votes of African-Americans. For example, the intentional “packing” and “cracking” of African Americans into districts, the use of at-large voting systems, and the annexations of primarily white areas to a city or parish that has experienced the election of African Americans are just a few of the tactics used to dilute the minority vote in Louisiana. These tactics have resulted in hundreds of objections from the U. S. Department of Justice on (DOJ) voting changes made by Louisiana officials. Sections 2 and 5 of the Voting Rights Act of 1965¹ are enforced by the DOJ to guarantee that districts are not drawn to prevent African-American voters from electing their candidates of choice.

On the eve of the beginning of the Louisiana redistricting cycle, I offer this testimony to provide recommendations on protecting African-American communities in this process and to advocate for a fair and open redistricting process. The displacement of thousands of African Americans from Orleans Parish post-Hurricanes Katrina and Rita does not absolve the state legislature from drawing majority-minority districts, coalition districts or crossover districts that permit the African-American community to elect candidates of choice; neither does the recent Supreme Court decision in *Barlett v. Strickland*.² Rather, the population changes in Orleans Parish require that elected officials involved in the redistricting process make greater efforts to draw districts that expand the franchise to the African-American community dispersed throughout Orleans Parish and the state of Louisiana.

The 2010 Census Data reveals a Decrease in the African-American Population in Orleans Parish, post-Hurricanes Katrina and Rita, but statewide, the African-American Population Remains Consistent with the 2000 Census Data.

Hurricane Katrina struck the Gulf Coast leaving devastation and homelessness in its wake. At least 85 percent of New Orleans was flooded when the levees broke. Residents of New Orleans were forced out of their homes and scattered throughout Louisiana and in states throughout the country. Five and one-half years later, the post-Katrina effects are documented in the 2010 U.S. Census data. New Orleans lost “140,845 residents, a drop of 29 percent since 2000.” The “black population fell to 60.2 percent from 67.3 percent.”³

Still, the census numbers reveal that the statewide African- American population has not decreased in Louisiana—it has remained consistent at 32 percent—although, the African-

¹ 42 U.S.C. 1973b-c (2010).

² 129 S. Ct. 1231 (2009).

³ Millenberg, David. Census Finds Hurricane Katrina Left New Orleans Richer, Whiter, Emptier. Huffington Post, Feb. 4, 2011.

American population is dispersed. The Hispanic or Latino population has increased 78.7 percent to 4.2 percent of the state's population while the white population has decreased -0.7 percent between 2000 and 2010 while.⁴

The drop in population has resulted in the loss of one congressional seat in Louisiana—decreasing the state's congressional seats from seven to six. Based on these numbers, there clearly exists an opportunity for our community of interest to elect a candidate of its choice.

Section 2 of the Voting Rights Act of 1965 Prevents Diluting the African-American Vote During the Redistricting Cycle.

Section 2 of the 1965 Voting Rights Act, as amended in 1982, prevents “minority vote dilution.”⁵ In the seminal case, *Thornburg v. Gingles*,⁶ the Supreme Court of the United States made clear that minority vote dilution occurs when minority voters are denied an opportunity to elect candidates of their choice.⁷

Often political parties utilize “cracking” and “packing” to protect incumbents during the redistricting process. Cracking occurs when minority voters are divided among districts—preventing these voters from constituting a majority in a single-member district and preventing the minority group from electing their candidate of choice. Packing is the opposite of cracking and occurs when minority voters whom have the ability to constitute a majority in a single-member district are divided among districts diluting their voting strength.

In 2009, the Supreme Court ruled in a 5-4 decision in *Bartlett*⁸ that a minority must constitute a majority in a single-member district to require that a majority-minority district be drawn under Section 2 of the Voting Rights Act and that Section 2 does not require that crossover districts be drawn. In *Bartlett* the African-American voting age population was 39 percent in a North Carolina legislative district. The crossover of a small percentage of white voters who support the candidate of choice of the African-American community resulted in the African-American community electing their candidate of choice.

It is important to emphasize that the decision in *Bartlett* does not preclude states from drawing crossover districts and in certain instances may support the drawing of crossover districts to “diminish the significance and influence of race by encouraging minority and majority voters to work together toward a common goal.”⁹ In fact, the Court recognized that state legislatures may maximize minority voting strength by drawing crossover districts.”¹⁰

Despite the results of the 2008 election, including the election of the President Obama, the first-ever African-American President of the United States, the Court also recognized in *Bartlett*,

⁴ <http://2010.census.gov/2010census/data/>.

⁵ 42 U.S.C. 1973c (2006).

⁶ 478 U.S. 30 (1986).

⁷ *Id.*

⁸ 129 S. Ct. 1231 (2009).

⁹ *Id.* at 1248.

¹⁰ *Id.*

“racial discrimination and racially polarized voting are not ancient history. Much remains to be done to ensure that citizens of all races have an equal opportunity to share and participate in our democratic process and traditions[.]”¹¹

Coalition districts are formed when two minority groups that vote cohesively and together when joined together constitute a majority in a single-member district. Coalition districts provide another opportunity, in addition to majority-minority and crossover districts, for minority communities to elect a candidate of choice. In minority communities throughout Louisiana, where the opportunity exists to draw an African-American and Latino coalition district and where the two minority groups could constitute a majority, the state legislature and redistricting governing bodies may be required to draw a coalition district in order to comply with Section 2 of the Voting Rights Act.¹²

It is also important that “influence districts” are not used as a substitute for other types of minority districts that provide a greater opportunity for minority voters to elect their candidate of choice. There is no magic number for determining “significant” percentage of the voting age population that would guarantee that influence districts provide minority voters with opportunities to elect a candidate of choice and they may actually weaken the minority vote.¹³

The State of Louisiana has the Burden of Demonstrating that Newly-Drawn Districts Comply with Section 5 of the Voting Rights Act.

Under Section 5 of the Voting Rights Acts, amended in 2006, Congress clarified that a state’s proposed redistricting plan is retrogressive if it has the effect of “diminishing the ability of any citizens of the United States” based on “race, color, or membership in a language minority group defined in the Act,” “to elect their preferred candidate of choice.”¹⁴

In the February 9, 2011 notice provided by the DOJ, “Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act” DOJ clarified that in those jurisdictions where the state asserts there have been significant shifts in the population since the last redistricting cycle, the jurisdiction bears the burden of “demonstrating that a less retrogressive plan cannot reasonably be drawn.”¹⁵ In essence, the loss of the African-American population in New Orleans Parish cannot be used as an excuse to draw retrogressive districts.

In the DOJ review of the plans submitted by the jurisdiction as well as alternate plans submitted by citizens, the DOJ will analyze the plans to determine whether less retrogressive plans were submitted by interested citizens and others. In some instances, adherence to Section 5 may require the jurisdiction to depart from the state’s redistricting principles, meaning that where

¹¹ *Id.* at 1249.

¹² *Id.*

¹³ See 42 U.S.C. 1973c, as amended, (noting that *Georgia v. Ashcroft* weakened the Voting Rights Act and misconstrued Congress’ original intent in enacting the Voting Rights Act) effectively overturned the decision in *Georgia v. Ashcroft* that previously held that the most effective way to maximize minority strength is by creating influence districts.

¹⁴ 42 U.S.C. 1973c(b)(d)(2006).

¹⁵ Federal Register, Vol. 76, No. 27 (Feb. 9, 2011).

there are standards such as compactness and following existing district boundaries, or incumbency protection, these standards may need to “give way” to comply with Section 5 of the Voting Rights Act.¹⁶

Keeping Communities of Interest Intact must be a Priority of the Louisiana Legislature and other Redistricting Bodies.

A “community of interest” is described as a group of people who share several characteristics, who live in a close geographic area, and whose ability to choose political representation may be affected by the redistricting process. Community of interest is a race-neutral traditional redistricting principle that must be considered when new districts are drawn. Even though courts have not precisely defined community of interest in a redistricting context, communities of interest could be defined as those communities whose livelihood was destroyed as a result of the BP Oil Spill in 2010 or those individuals returning to the Lower Ninth Ward to rebuild after Hurricane Katrina. For the purposes of electing candidates of choice, these communities should not be dispersed among districts but must remain together when new districts are drawn.

Maps drawn by interested citizens identifying and mapping communities of interest must be given the same review that is afforded the maps drawn by the state legislatures and redistricting bodies.

Final Recommendations

As the 2011 redistricting cycle gets underway in Louisiana, we offer the following recommendations:

- it is crucial that this redistricting cycle is a fair and open process that respects the role of interested citizens engaging in the process—the redistricting process belongs to the people not the legislators;
- Sections 2 and 5 of the Voting Rights Act must be adhered to—minority vote dilution and maps submitted for preclearance by the jurisdiction must not be retrogressive—both are a clear violation of federal law and will result in an objection from the DOJ;
- Drawing maps with majority-minority, coalition, and crossover districts will provide greater opportunities for the African-American and Latino groups to elect candidates of choice;
- Considering communities of interest, a race neutral redistricting principle, keeps communities of common interest together and permits these communities to elect candidates of choice that are sensitive to and support the needs of these communities.

In closing, thank you for providing me an opportunity speak to you on behalf of The Louisiana Justice Institute and the many New Orleanians here and on the road home. I welcome your questions and the opportunity to provide any additional information you need in support of my testimony.

¹⁶ *Id.*