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May 9, 2011

Mr. Charles Strome, III
City Manager
515 North Avenue
New Rochelle, New York 10801

Re: City of New Rochelle Redistricting Proposals

Dear Mr. Strome:

I have been retained to provide a legal opinion with respect to whether and to what extent the competing redistricting proposals ("Plan A" and "Plan B", collectively the "Plans") pending before the New Rochelle City Council are consistent with the requirements of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. §§ 1971, 1973-1973bb-1 ("Section 2"). For this task, I evaluated the Plans using both the current state of Section 2 jurisprudence and my expertise and understanding of redistricting principles. Based on this analysis, it is my opinion that both Plans would withstand scrutiny under Section 2.

Section 2 of the Voting Rights Act

At the outset, a local government's redistricting plans are subject to Section 2 of the Voting Rights Act. Section 2 prohibits any state or political subdivision from imposing a voting qualification or prerequisite to voting or standard, practice, or procedure in a manner which results in the denial or abridgement of the right to vote on account of race or color. 42 U.S.C. §§ 1971, 1973-1973bb-1. The Supreme Court, in *Thornburg v. Gingles*, 478 U.S. 30 (1986), established the framework for challenging multimember districts under Section 2 by setting forth

a three-part test that a minority group must satisfy in order to demonstrate vote dilution.[1] First, the minority group must demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single member district. Second, the group must demonstrate that it is politically cohesive. Finally, the group must demonstrate that bloc voting by the white majority usually defeats the minority's preferred candidate. *Id.* at 50-51.

In addition to these three preconditions, the minority group must establish, under a "totality of the circumstances test," that as a result of the challenged practice or procedure, the group does not have an equal opportunity to participate in the political process and to elect candidates of its choice. *Id.* at 44. It is important to note that in terms of the present task, the Supreme Court in *Growe v. Emison*, 507 U.S. 25 (1993), held that the *Gingles* analysis likewise applied to challenges to redistricting plans involving single member districts.

One of the issues faced by legislatures in drafting a redistricting plan is whether, and to what extent, districts can be created that will provide a minority group or groups with an opportunity to nominate and elect candidates of choice. In approaching this question, courts have developed several concepts that are used to determine whether a redistricting plan violates Section 2. Three such concepts, relevant to the immediate analysis, include "effective minority districts," "coalitional districts," and "influence districts."

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[1] In a multimember district election, two or more members to a legislative body are elected in the same district. In a single member district plan, each member of the legislative body is elected in separate districts.

An effective minority district is a district that contains a sufficient population to provide the minority community with an opportunity to elect a candidate of its choice.[2] A coalitional district, by contrast, is a district where more than one minority group resides and where, working in coalition, they can form a majority to elect a minority-preferred candidate.[3] Finally, an

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[2] In determining whether a district is an effective minority district, courts have held that the appropriate measure is the eligible minority voter population, not the total minority population of the district. *Reyes v. City of Farmers Branch, Texas*, 586 F.3d 1019 (5th Cir. 2009) (Courts must consider the citizen voting age population of the group challenging the electoral practice); *Barnett v. City of Chicago*, 141 F.3d 699, 704 (7th Cir. 1998)("We think that citizen voting-age population is the basis for determining equality of voting power that best comports with the policy of the statute."); *Negron v. City of Miami Beach,* 113 F.3d 1563, 1569 (11th Cir. 1997)("[T]he proper statistic for deciding whether a minority group is sufficiently large and geographically compact is voting age population as refined by citizenship."); *Romero v. City of Pomona,* 883 F.2d 1418, 1426 (9th Cir. 1989)("The district court was correct in holding that eligible minority voter population, rather than total minority population, is the appropriate measure of geographical compactness."), *overruled in part on other grounds by Townsend v. Holman Consulting Corp.*, 914 F.2d 1136, 1141 (11th Cir. 1990); *U.S. v. Village of Port Chester*, 704 F.Supp. 2d 411 (S.D.N.Y. 2010)(Most reliable measure of whether Hispanics constitute an effective majority in proposed district 4 is citizen voting age population data); s*ee also League of United Latin American Citizens ("LULAC") v. Perry,* 548 U.S. 399, 428 (2006) ("Latinos in District 23 could have constituted a majority of the citizen voting-age population in the district."); *Bartlett v. Strickland,* 129 S.Ct. 1231, 1249 (2009)("Only when a geographically compact group of minority voters could form a majority in a single-member district has the first *Gingles* requirement been met.").

[3] To date, the Supreme Court has not held expressly that a claim under Section 2 can be stated where a jurisdiction has failed to establish a minority coalitional district. *Bartlett v. Strickland,* 129 S.Ct. at 1242-43 (Court declined to address that question); *Growe v. Emison,* 507 U.S. at 41 ("Assuming (without deciding) that it was permissible for the District Court to combine distinct ethnic and language minority groups for purposes of assessing compliance with §2, when dilution of the power of such an agglomerated political bloc is the basis for an alleged violation."). However, a number of lower courts have held that a Section 2 case may consist of a coalition of minority groups if they are sufficiently politically cohesive and have a sufficient commonality of interest. *See Bridgeport Coalition for Fair Representation v. City of Bridgeport,* 26 F.3d 271, 275 (2d Cir. 1994) (Combining minority groups to form a majority-minority district is a valid means of complying with Section 2 if the combination is shown to be politically cohesive.), *cert. granted, judgment vacated on other grounds,* 115 S.Ct. 35 (1994); *Concerned Citizens of Hardee County v. Hardee County Board of Commissioners,* 906 F.2d 524, 526 (11th Cir. 1990) ("Two minority groups . . . may be a single section 2 minority if they can establish that they behave in a politically cohesive manner."); *Campos v. City of Baytown, Texas,* 840 F. 2d 1240, 1244 (5th Cir. 1988) ("There is nothing in the law that prevents the plaintiffs from identifying the protected aggrieved minority to include Blacks and Hispanics.").

influence district is a district where a minority group, which is not sufficiently large to elect a candidate of its choice, can nonetheless influence the outcome of an election by voting as a bloc.[4] As explained below, each of these concepts is relevant to an evaluation of the redistricting Plans because the potential exists to create one or more of these districts in New Rochelle (*i.e.*, an effective minority district can be created for African-American voters, an influence district can be created for Hispanic votes, and a potential minority coalition district can be created by combining African-Americans and Hispanics in a district).[5]

The Plans

During the current redistricting process, Plan A and Plan B were submitted to the City Council. Plan A contained demographic information for the proposed districts by total population, voting age population and citizen voting age population. Plan B contained only demographic data at the total population level. In order to have a basis for comparing each plan, I was provided demographic data for Plan B at the total population, voting age population ("VAP") and citizen voting age population levels ("CVAP").

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[4] With respect to influence districts, the Supreme Court has held that Section 2 does not require the creation of such districts. *Bartlett v. Strickland, 129 S.Ct. at 1242; LULAC v. Perry,* 548 U.S. at 446. While the Court in *Bartlett* concluded that such districts were not required it observed that §2 allows States to choose their own method of complying with the Voting Rights Act. Although a legislature is not required to create influence districts, a legislative determination to create such a district where the minority group could not otherwise constitute a majority of the citizen voting age residents of a district would be permitted under Section 2.

[5] With respect to redistricting, data from the United States Census is used to calculate the demographics of proposed districts. Courts have recognized that census data is presumptively accurate. *U.S. v. Village of Port Chester*, 704 F. Supp. at 438; *Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 853-54 (5th Cir. 1990); *Johnson v. DeSoto County Bd. of Comm'rs,* 204 F.3d 1335, 1341 (11th Cir. 2000).

In both plans, District 3 would be an effective minority district. In Plan A, District 3 is 52.6% Non-Hispanic black CVAP. Under Plan B, the Non-Hispanic black CVAP is 58.5%. When the current district lines were established in 2004, District 3 had a Non-Hispanic black CVAP of 51.7%. Since 2004, the district has consistently elected a candidate of choice of the African-American voters. Accordingly, under either plan, District 3 would be considered an effective minority district.

With respect to the Hispanic community, it is not feasible to create a district where Hispanic voters would constitute a majority of the CVAP in a district. However, it is possible to create influence or coalitional districts. In order to determine if a minority coalition district could properly be created research into the voting behavior of the minority groups and other coalitional activities would have to be developed. Under Plan A, District 1 with a Hispanic CVAP of 24.1% could be a Hispanic influence district, if Hispanics voted as a bloc, and a minority coalition influence district if Hispanics and Non-Hispanic blacks (13.4% CVAP) voted together for the same candidates. Under Plan B, the Hispanic CVAP is 12.6%, and even with support from Non-Hispanic blacks (10.1% CVAP), it is unlikely that the proposed district could influence an election.

Under both plans, District 4 could be a minority coalition influence district if African-Americans and Hispanics supported the same candidates. Under Plan A, District 4 would have a Hispanic CVAP of 14.2% and a Non-Hispanic black CVAP of 27.1%. Thus, if both groups were combined the district would be 41.3 % minority. Additionally, under Plan A, District 4 could also be considered an African-American influence district. Under Plan B, the Hispanic CVAP

would be 26.7%, and if Hispanics voted as a bloc the district could be an influence district. If the Hispanic voters were combined with Non-Hispanic blacks (21.0% CVAP), the district under Plan B could be a minority coalition influence or plurality district, since the Non-Hispanic white CVAP is 46.2%.

Conclusion

It is my opinion that both Plans are consistent with the requirements of Section 2 because both create an effective African-American district. Although Plan B has a higher Non-Hispanic, black CVAP in District 3, that percentage may not be necessary to create an effective district as the district has consistently elected African-American council members with a lower CVAP percentage. Furthermore, both Plans would give Hispanic voters an opportunity to influence the outcome in one district and both Plans provide the possibility of a minority coalition district if African-Americans and Hispanic work as a coalition.

Thank you again for the opportunity to undertake this analysis. Should you require any further analysis or explanation of the above, please feel free to contact me.

Yours very truly,

Randolph M. McLaughlin