

LONE STAR PROJECT

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“Hidden” DOJ Memo Details Texas Voting Rights Violations

Bush political appointees overruled experts to approve illegal DeLay redistricting plan

The Lone Star Project has obtained an internal memo written by U.S. Department of Justice voting rights experts on December 12, 2003.

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The memo details major voting rights violations under the redistricting plan Tom DeLay forced through the Texas State Legislature in 2003. The document is under “quarantine” within the Justice Department and its authors were put under a “gag order” to prevent public, or even internal, discussion of the memo. An examination of the memo makes clear what the Republicans want to hide and confirms long-held suspicions by minority rights advocates that Bush political operatives ignored the law, ignored the facts, and were willing accomplices in the political crime against minority voters that DeLay orchestrated in Texas.

In a seventy-three page memo, seven Department of Justice voting rights experts and their section chief unanimously recommended that the Department of Justice file a formal objection to the DeLay plan under Section 5 of the Voting Rights Act. Their recommendation directly and unambiguously describes how the DeLay plan illegally reduces minority voting strength in Texas to advance the partisan goals of DeLay and the Republican Party.

The DOJ experts’ recommendation was overruled by two Bush Administration political appointees, Hans von Spakovsky and Brad Schlozman. Spakovsky is a political operative who has written extensively advocating widely criticized voting changes that make it more difficult for minorities to register and vote. Prior to his DOJ appointment, Spakovsky worked as part of the infamous Voter Integrity Team which worked to remove African Americans from the voter rolls in Florida during the 2000 General Election. (Source: *New Yorker*, 9/20/2005) Schlozman, much like Michael Brown at FEMA, was assigned to the Voting Rights Section of the Justice Department although he had no experience in civil rights law or minority voting rights.

Excerpts from the DOJ voting rights staff memo and section chief's concurrence:

DeLay Plan Retrogressive and Discriminatory:

- “Our examination of the proposed plan indicates that it will lead to an impermissible retrogression in the position of minorities with respect to their effective exercise of the electoral franchise.” (*Source: DOJ Section 5 Recommendation Memorandum, December 12, 2003, page 31*)
- The State of Texas has not met its burden in showing that the proposed congressional redistricting plan does not have a discriminatory effect. (*Source: DOJ Section 5 Recommendation Memorandum, December 12, 2003, page 66*)

Effective Minority Seats Weakened and Eliminated:

- “with regard to minority voters’ ability to elect the candidate of their choice – the so-called “safe” seats – there is a net reduction of two seats.” (*Source: DOJ Section 5 Recommendation Memorandum, December 12, 2003, page 31*)
- “the net result of the plan reduces by one the number of districts in which the Hispanic minority community can “safely” elect candidates of their choice to office.” (*Source: DOJ Section 5 Recommendation Memorandum, December 12, 2003, page 31*)
- “There is classic retrogression in the benchmark District 23 (Bonilla)...With the extreme level of polarization in the district, Hispanic voters simply no longer have any ability to elect their candidate of choice.” (*Source: DOJ Section 5 Recommendation Memorandum, December 12, 2003, page 68*)
- “black voters have the ability to elect the candidates of their choice in 18 (Jackson Lee), 24 (Frost), 25 (Bell), and 30 (Johnson). In the proposed plan, black voters can no longer elect their candidate of choice in proposed 24 (Frost). (*Source: DOJ Section 5 Recommendation Memorandum, December 12, 2003, page 31*)
- “moreover, while proposed 15 (Hinojosa) is no longer a “safe” district, it is not a total loss; it moves from the “safe” category to the “coalitional” category.” (*Source: DOJ Section 5 Recommendation Memorandum, December 12, 2003, page 31*)
- In sum, the proposed plan reduces the level of minority voting strength because it eliminates the ability that minority voters have in Benchmark 15 (Hinojosa), 23 (Bonilla) and 24 (Frost) to elect candidates of choice. In each of these districts, the state failed to follow its traditional redistricting principles preserving communities of interest and forbidding fragmentation or packing of minority voters.” (*Source: DOJ Section 5 Recommendation Memorandum, December 12, 2003, page 69*)

Overwhelming Minority Opposition:

- “Of the 55 African American and Hispanic legislators in the legislature, 53 voted against the redistricting plan.” (*Source: DOJ Section 5 Recommendation Memorandum, December 12, 2003, page 11*)
- “We have either met with or spoken to 22 state house representatives and 13 state senators, of whom 14 are Hispanic, 11 are African American and nine are Anglo. Of the minority legislators to whom we talked, all but two opposed the

- redistricting plan.” (Source: *DOJ Section 5 Recommendation Memorandum, December 12, 2003, page 11*)
- “In total, the Section received 335 [written] comments against the proposed plan, none in favor of it.” (Source: *DOJ Section 5 Recommendation Memorandum, December 12, 2003, page 11*)

Staff Experts’ Recommendation:

- “For the reasons set forth above, we recommend that you interpose an objection of H.B.3, which provides for the redistricting of the congressional districts in Texas....” (Source: *DOJ Section 5 Recommendation Memorandum, December 12, 2003, page 71*)

Section Chief Concurrence:

- “Our review indicates that the factors identified as relevant to each prong of the totality of circumstances test demonstrates that the plan is retrogressive.” (Source: *DOJ Section 5 Recommendation Memorandum, Section Chief Concurrence, December 12, 2003, page 71*)
- “in the end we concluded there was a net reduction of one “safe” Hispanic seat and one “safe” black seat...” (Source: *DOJ Section 5 Recommendation Memorandum, Section Chief Concurrence, December 12, 2003, page 72*)

Background:

At the insistence of Tom DeLay, the Texas Legislature took the unprecedented step of redrawing Texas congressional district lines in 2003. DeLay had been infuriated at the inability of GOP candidates to unseat long-time Democratic incumbents and wanted to redraw the districts to guarantee more GOP-held seats. In 2002, he had engineered a political plan, which included the money laundering scheme that led to his indictment, to insure a Republican majority in the State House which he would later use to redraw congressional lines. DeLay didn’t hide his intentions when he said, “I am the majority leader and I want more seats.” (Source: *Washington Post, 5/9/2003*)

The Texas Redistricting case gained national attention when, at different times, Democrats in the Texas State House and Texas State Senate left the State of Texas and caucused first in Ardmore, Oklahoma and later in Albuquerque, New Mexico, to block action on the DeLay plan. Ultimately, after direct intervention by DeLay and support from top Bush aides, Karen Hughes and Karl Rove, Republican leaders in Texas changed legislative rules and forced through the redistricting plan. (Source: *Houston Chronicle 7/11/03 and Dallas Morning News 7/8/03*)

Once the plan was forced through the State Legislature, it was submitted for review by the U.S. Department of Justice. It is now clear that professionals at DOJ determined that the plan violated the Voting Rights Act and recommended that the department file an objection. Their recommendation was overruled by political appointees. When the plan was challenged in federal court, the approval by the Department of Justice shifted the burden of proof to those opposing the plan, and was cited by both the state and the bench as a key element in the case. Had DOJ filed an objection to the plan, as was

recommended by its voting rights experts, it is unlikely that it would have been approved by the federal court. The legal challenge to the DeLay plan is now pending review by the U.S. Supreme Court.

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