

D.J. 166-012-3
X9172; A0904-05

JUL 7 1977

Mr. Kirby A. Glaze
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120 North McDonough Street
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Dear Mr. Glaze:

This is in reference to your submission of Act No. 439, Georgia Law, 1977, amending the Charter of the City of Palmetto, and to your request for reconsideration of the objection interposed by the Attorney General to the change to election by position for the City Council for the City of Palmetto, both pursuant to Section 5 of the Voting Rights Act of 1965. The submission of Act No. 489 was received on May 9, 1977, and the request for reconsideration was received on May 10, 1977.

Our letter of April 27, 1977 cited various cases that have discussed the discriminatory potential of election by position. On the basis of those cases and the factual situation in Palmetto revealed by our research and analysis, we were unable to conclude that election by position would not have a racially discriminatory effect in Palmetto. In general, these same cases have found a discriminatory potential in the majority vote requirement. The United States Court of Appeals for the Fifth Circuit recently stated: "We noted in Lizner v. McKeithen, 485 F.2d at 1305, that the Supreme Court in White v. Regester had identified several factors indicative of denial of access to the political process.

Among these are: . . . rules requiring a majority vote as a prerequisite to nomination, 412 U.S. at 766, 37 L.Ed. 2d at 324." Kirksey v. Hinds County Board of Supervisors, No. 75-2212 (5th Cir. May 31, 1977), slip opinion at 8 (footnote omitted).

Section 2 of Act No. 489 creates Section 9.1 of the Charter of the City of Palmetto, which requires a majority vote for election of the mayor and members of the city council. On the basis of our analysis, and the court decisions cited above and in our April 27 letter, we are unable to conclude, as we must under the Voting Rights Act, that this provision will not have a racially discriminatory effect on the conduct of elections in Palmetto. Accordingly, on behalf of the Attorney General I must interpose an objection to use of the majority vote requirement in the context of the at-large election system in Palmetto.

In this connection, Section 1 of Act No. 489 creates Section 7.1 of the Charter of the City of Palmetto, which re-establishes the date for municipal elections. The provision changes the election date to accommodate any run-off election required because of Section 9.1. While we find nothing discriminatory in the change in election date itself, because it is tied to the adoption of a majority requirement we must advise you that giving any effect to this change in an effort to implement the majority vote requirement is legally impermissible.

In your request for reconsideration of our objection to the designated seat rule you indicated that Act No. 489 would "dispel any racially discriminatory effect" that we considered may result from the designated seat rule and that the combination of the majority vote requirement in the newly enacted law and the designated seat rule

would "serve to provide for . . . nondiscriminatory elections in the City of Palmetto." Because we find no support for these conclusions and because the court decisions referred to above and in our April 27 letter suggest the contrary, I must, on behalf of the Attorney General, decline to withdraw the objection to election of members of the city council of the City of Palmetto by position.

Finally, we note that Section 2 of Act No. 489 creates Section 8.1 of the Charter of the City of Palmetto, which states: "All municipal elections for the City of Palmetto shall be governed and regulated by the provisions of the Georgia Municipal Election Code (Ga. Laws 1968, pp. 885, 887 as amended) as they now exist or in the future may be amended." If the use of the Georgia Municipal Election Code by the City of Palmetto results in any further changes in election practices or procedures, such changes must also be subjected to the Section 5 preclearance requirements. In this regard, we note that Section 14A-902 of the Code requires the use of a designated seat system. As a result of the Attorney General's objection, however, the City of Palmetto may not legally follow this section.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that the changes objected to neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. Until such a declaratory judgment is obtained the designated seat and majority vote requirements are legally unenforceable.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division