U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 3 1987

C. Robert Melton, Esq.
City Attorney
P. O. Box 733
Forsyth, Georgia 31029

Dear Mr. Melton:

This refers to your request that the Attorney General reconsider the December 17, 1985, objection under Section 5 of the Voting Rights Act, as amended, 42 U.S.C. 1973c, to ten annexations to the City of Forsyth in Monroe County, Georgia, and to your submission pursuant to Section 5 of seventeen additional annexations to the city: Act No. 1025, H.B. No. 1534 (1986); the Cartledge, McKenney, Lizek, Crawley, McMichael, and Hardin annexations (March 18, 1986); the Woods annexation (May 6, 1986); the Days Inn annexation (July 1, 1986); the Main Street annexation (July 3, 1986); the Newton-Taylor and Daniels annexations (August 5, 1986); the Evergreen annexation (July 15, 1986); the Davis annexation (September 2, 1986); the Laney and Sanders annexations (September 16, 1986); and the Best Western annexation (December 16, 1986). We received your request for reconsideration and your submission on January 2, 1987.

We have considered carefully the information you have provided, as well as comments and information from other interested parties. With regard to the Hardin, Days Inn, Davis, and Best Western annexations, the Attorney General does not interpose any objections. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See Section 51.41 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)).

With respect to the request for reconsideration and the remaining thirteen newly submitted annexations, however, we cannot reach the same conclusion. In that connection, we believe it important to review the basis for our initial objection to the ten annexations on December 17, 1985. At that time we found that the addition of those areas "would reduce the city's minority population by two percent and eliminate the slight black population majority that had recently developed in the city." In the context of the city's at-large election system and the racially polarized voting that seemed to exist, we saw the addition of those ten areas as serving to "perpetuate and enhance an electoral system which restricts minority voting potential." When, thereafter, reconsideration of that objection was requested, we observed, in our letter of March 4, 1986, that we found no basis for withdrawing the objection and in particular noted that the city had failed to take any steps to ensure that black voting strength would be reflected fairly in the expanded city.

Our review of the circumstances reflected by your latest submission and request for reconsideration likewise does not reveal that the city has taken the steps necessary to ensure that black voting strength will be recognized fairly in the enlarged city even though the two percent dilution noted in connection with the earlier ten annexations now would be increased to 2.35 percent by virtue of the thirteen newly submitted annexations in question. While, as indicated in our March 4, 1986, letter, Section 5 does not bar a city from annexing areas that reduce the minority population percentage so long as steps are taken to ensure that black voting strength is fairly reflected in the enlarged city, see City of Richmond v. United States, 422 U.S. 358 (1975), we do not find that such steps to this point have been taken adequately in this case.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.52(a) (52 Fed. Reg. 497-498 (1987)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the burden has been sustained at this time in this instance. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the previously submitted ten annexations and also interpose an objection to the newly submitted thirteen specified annexations adopted in 1986.

Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, irrespective of whether the changes previously have been submitted to the Attorney General. We also note that the city apparently has begun consideration of a change in the election method which, if enacted, particularly in consultation with the city's minority community, promises to meet the standard enunciated in City of Richmond, supra. However, as we have pointed out on earlier occasions, until the objection is withdrawn or a judgment is rendered by the District of Columbia court, the legal effect of the objection by the Attorney General is to render the twenty-three annexations in question legally unenforceable insofar as they affect voting. See also Section 51.10 (52 Fed. Reg. 492 (1987)).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Forsyth plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division