

Re.T. 4/24/91, Re.T. 4/26  
JRD:RBJ:MDK:gmh  
DJ 166-012-3  
90-2776

April 26, 1991

William L. Tribble, Esq.  
East Dublin City Attorney  
P.O. Drawer 2027  
Dublin, Georgia 31040

Dear Mr. Tribble:

This refers to Act No. 870, H.B. No. 1999 (1990), which provides for a change in the method of election from five members elected at large to three members elected from single-member districts and two elected at large, a districting plan, numbered posts for the at-large positions, a majority vote requirement for the election of the mayor and councilmembers, and four year terms of office for the City of East Dublin in Laurens County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on February 25, 1991.

The Attorney General does not interpose any objection to the changes in method of election from five members elected at large to three members elected from single-member districts and two at large, the districting plan, or the adoption of four year terms. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the proposed adoption of a majority vote requirement and numbered posts for the at-large positions, however, we are unable to reach a similar conclusion. We have considered carefully the information you have provided, as well as information from other sources. At the outset, we note that it is generally well established that a majority vote requirement

and numbered positions in an at-large context enhance the opportunity for discrimination against minority voters. See e.g. City of Port Arthur v. United States, 459 U.S. 159 (1982); Senate Report No. 417, 97th Congress, 2nd Session 6 (1982). This is of particular significance in East Dublin since black voters have been able to elect representatives of their choice at large where seats were not numbered and a plurality was sufficient to win. Thus, it would appear that imposition of the majority vote and numbered post requirements would make it more difficult for black voters to elect candidates of their choice to the at-large council positions and the city has presented us with nothing to show that that would not be the case.

Furthermore, it appears that the council adopted the majority vote requirement over the objections of the two minority members of the council and despite the explicitly stated concern of Mayor Gornto and others that the proposed change would have a discriminatory effect. Yet, even in the face of these concerns, no valid, non-racial reason has been advanced by the city to justify either the majority vote requirement or the change to numbered positions for the at-large council seats.

Under Section 5 of the Voting Rights Act, the city 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 28 C.F.R. 51.52. With respect to the proposed use of a majority vote requirement and numbered positions for the at-large council seats, I cannot conclude, as I must under the Voting Rights Act, that the city has carried its burden of showing that these changes do not have the proscribed discriminatory purpose or effect. Therefore, on behalf of the Attorney General, I must interpose an objection to the submitted changes insofar as they establish a majority vote requirement and numbered posts for the at-large council positions.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the majority vote requirement and numbered positions continue to be legally unenforceable insofar as they apply to the at-large council positions. 28 C.F.R. 51.10 and 51.45.

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To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of East Dublin plans to take concerning this matter. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

John R. Dunne  
Assistant Attorney General  
Civil Rights Division