U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Knox Bell
Mayor
P. O. Box 1249
Monroe, Georgia 30655

JUL 08 1991

Dear Mr. Bell:

This refers to the change from a plurality vote to a majority vote requirement for city elections, and changes in the date of runoff elections, special election procedures, polling place hours, absentee voting procedures, candidate qualification requirements, including the conditions under which a councilmember must vacate his/her seat, tie-breaking and veto powers of the mayor, a prohibition of political activity by city employees, the method of staggering councilmember terms, an increase in the length of councilmember terms from two years to four years, and changes in the boundaries of residency wards for the City of Monroe in Walton 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 in response to our November 19, 1990, request for more information on May 7, 1991.

The Attorney General does not interpose any objection to the changes in special election procedures, polling place hours, absentee voting procedures, candidate qualification requirements, powers of the mayor, the prohibition of political activity by city employees, the method of staggering terms for councilmembers, the increase in the length of terms of councilmembers from two years to four years, and the change in residency ward boundaries. However, we note that Section 5 expressly provides 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 change from a plurality to a majority vote requirement, however, we cannot reach a similar conclusion. We have given careful consideration to the information in your submission, as well as information from the Census and from other

sources. We note that according to the 1990 Census, the City of Monroe is 40.9 percent black, yet no black has ever been elected to city office.

At the outset, we note that in 1976 a three-judge federal district court enjoined further implementation of the 1966 and 1971 Monroe charter changes which sought to impose a majority vote requirement because the city had failed to obtain preclearance pursuant to Section 5 of the Voting Rights Act. Howard v. Board of Commissioners of Walton County, Civ. Action No. 75-67ATH (M.D. Ga. July 29, 1976). In the same case, on remand to the originating judge, it was ruled that those provisions were inoperable, but that the Georgia Municipal Election Code provision, Section 34A-1407(a), controlled since Monroe was left effectively with a charter silent on the question of majority or plurality vote requirement.

This ruling, however, does not negate the necessity for preclearance of the city's change in practice from requiring a plurality vote to requiring a majority vote. The Georgia Municipal Election Code, mentioned above, does not require a municipality to change its practice of plurality voting. Rather, the Code leaves the city the option of conforming its charter to its practice. It is only after the individual municipality exercises that option, or fails to exercise it, that the change in practice, if any, with respect to that particular city, becomes evident. The city's choice in changing its practice to majority vote is therefore subject to Section 5. See 28 C.F.R. 51.15. This consistently has been our position with respect to other municipalities in Georgia. See e.g., United States v. Cohan, 358 F. Supp. 1217 (S.D. Ga. 1973).

The current method of electing the city council is at large, with four members elected from residency wards and two members elected without residency wards, but with numbered posts. Where voting is racially polarized, as is apparent in Monroe, the at-large election method places a significant limitation on the ability of racial minorities to participate equally in the political process and elect candidates of their choice. Our review of Monroe's and Walton County's election returns indicate that racial bloc voting does occur in the city to a significant degree. In this context, the imposition of a majority vote requirement, by producing head-to-head contests in which the victor is determined by the voting majority, clearly would operate as an added obstacle to the potential for minority voters to elect candidates of their choice. See, for example, City of Port Arthur v. United States, 459 U.S. 159 (1982); Rogers v. Lodge, 458 U.S. 613, 627 (1982). Indeed, a black candidate for councilmember in 1971 did receive the plurality of votes in the initial primary, but was then

defeated in the runoff election by his white opponent. Thus, the imposition of a runoff requirement is retrogressive.

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 the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change to a majority vote requirement in 1966, 1971 and 1968.

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 continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

With regard to the changes in the date for the runoff elections, it is apparent that these changes are directly related to and dependent on the majority vote requirement. Accordingly, it would be inappropriate for the Attorney General to make a determination concerning this change at this time.

Finally, we have noted above our concerns that the at-large method of electing the Monroe City Council limits the ability of minority voters in Monroe to elect candidates of their choice. Viewed in the totality of electoral circumstances present in the city, this method of election violates Section 2 of the Voting Rights, as amended in 1982, 42 U.S.C. 1973. Thus, we request that you inform us of the action the City of Monroe 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

U.S. Department of Justice

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Office of the Assistant Attorney General

Washington, D.C. 20530

October 21, 1991

Honorable Knox Bell
Mayor
P. O. Box 1249
Monroe, Georgia 30655

Dear Mayor Bell:

This refers to your request that the Attorney General reconsider the July 3, 1991, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the change from a plurality vote requirement to a majority vote requirement for the City of Monroe in Walton County, Georgia. We received your letter on August 21, 1991.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, along with the other information in our files.

Your request for reconsideration is based on the Section 5 preclearance of the 1968 Municipal Election Code for the State of Georgia. However, as we noted in our letter of objection, preclearance of the state legislation does not constitute preclearance of the change to a majority vote requirement for the City of Monroe. Section 51.15 of the Procedures for the Administration of Section 5 governs enabling legislation and contingent or nonuniform requirements:

> With respect to legislation . . . that requires or enables the State or its political subunits to institute a voting change upon some future event or if they satisfy certain criteria, the failure of the Attorney General to interpose an objection does not exempt from the preclearance requirement the implementation of the particular voting change that is enabled, permitted, or required, unless that implementation is explicitly included and described in the submission of such parent legislation.

As an example of such contingent legislation, the procedures cite legislation "requiring a political subunit to follow certain practices or procedures unless the subunit's charter or ordinances specify to the contrary." 28 C.F.R. 51.15(b)(4). This is exactly the situation in the City of Monroe.

The submission of the 1968 Municipal Election Code did not specify which municipalities would be required to change their practices to a majority vote requirement as a result of the statewide legislation. In fact, the submission states that "[i]n view of the variety of laws which heretofore existed, no effort will be made herein to set forth the prior laws superseded by the Municipal Election Code." Thus, the application of the majority vote provision to Monroe was not under submission for review when we reviewed the 1968 Act and Section 5 preclearance is still required before the change to majority vote can be implemented legally in the City of Monroe.

Because you have not provided any additional information relating to the purpose or effect of the submitted change, I remain unable to conclude that the City of Monroe has carried its burden of showing that the 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. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the use of the majority vote requirement in the City of Monroe.

As we have previously advised you, until a declaratory judgment is rendered by the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, the objection by the Attorney General remains in effect and the proposed change is legally unenforceable. Clarke v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d). In this regard, we note that, due to the circumstances surrounding the number of qualified candidacies for this year's elections, there will be no need for a runoff provision for the elections to be held on November 5, 1991, in the City of Monroe. In addition, you have informed us that the City of Monroe intends to seek a change in the method of electing the city council when the legislature convenes in January of 1992 in an effort to remedy the discriminatory features of the existing system. So that we will be able to meet our responsibilities to enforce the Voting Rights Act, please keep us advised with respect to this legislation.

I have asked Richard Jerome, an attorney in our Voting Section, to be available to discuss this matter with you. Mr. Jerome can be reached at (202) 514-8696.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division