



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 23, 1992

William R. McNally, Esq.
McNally, Fox, Cameron
& Stephens
P. O. Box 849
Fayetteville, Georgia 30214

Dear Mr. McNally:

This refers to an annexation embodied in Ordinance No. 92-5 for the City of Union City in Fulton 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 your response to our request for additional information on August 24, 1992; supplemental information was received on September 25, 1992.

We have considered carefully the information you have provided, as well as Census data and comments and information from other interested persons. The 1990 Census reports that Union City's population increased significantly since 1980. In particular, the black share of the city's population increased from 18 to 51 percent over the decade. In addition, blacks currently comprise 52 percent of the city's registered voters. With regard to the submitted annexation, our analysis indicates that of the approximately 826 persons living within the area, only ten persons are black. Thus, it appears that the effect of the proposed annexation would be to decrease the black population percentage of the city by approximately 4.5 percentage points, and to convert the black registration majority to a white majority.

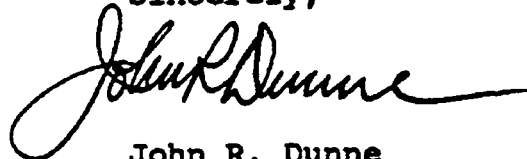
Under the City's at-large election, only one black person has been elected to the city council despite repeated black candidacies. Our review of election data indicates a pattern of racially polarized voting in city elections. In these circumstances, the reduction in the black share of the city's population would appear to further limit the opportunity for black citizens to elect representatives of their choice. See, e.g., City of Rome v. United States, 446 U.S. 156, 186-187 (1980).

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. 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). Under City of Richmond v. United States, 422 U.S. 358, 370-71 (1975), annexations that result, as here, in a significant decrease in the minority proportion of a city's population have such an effect and may pass Section 5 muster only if the method utilized for electing the city's governing body "fairly reflects the strength of the [minority] community as it exists after the annexation." 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 proposed annexation occasioned by Ordinance No. 92-5.

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 annexation has 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 proposed annexation continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Union City plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514 8690), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division



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Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

AUG 09 1993

William R. McNally, Esq.
City Attorney
P.O. Box 849
Fayetteville, Georgia 30214

Dear Mr. McNally:

This refers to your request that the Attorney General reconsider the October 23, 1992, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the annexation embodied in Ordinance No. 92-5 for the City of Union City in Fulton County, Georgia. We received your request on April 20, 1993; supplemental information was received on June 9, 14, 17, 24 and 28, 1993.

Since our objection was originally interposed, we have been provided with significant new information that materially affects our analysis of the submitted voting change. Recently obtained data indicate that the black share of the city's population has continued to increase since the 1990 Census, particularly as reflected by 1993 voter registration data showing that black voters comprise over 61 percent of the registered voters in the city. Thus, while the effect of the annexation appears to be a 4.5 percentage point reduction in the city's black population percentage according to 1990 Census data, current data show that black persons would continue to be a majority of the city's population and registered voters after the annexation. We have considered voter turnout data, as well, in assessing whether the city's method of electing its governing body would "fairly reflect the strength of the [minority] community as it exists after the annexation." City of Richmond v. United States, 422 U.S. 358, 370-71 (1975). We have concluded that the additional information sufficiently resolves the concerns that formed the basis for our prior objection to the annexation under Section 5.

Accordingly, pursuant to Section 51.48(b) of the Procedures for the Administration of Section 5 (28 C.F.R.), the objection interposed to the annexation embodied in Ordinance No. 92-5 for the City of Union City is hereby withdrawn. 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 change. See 28 C.F.R. 51.41.

If you have any questions, you should call Ms. Zita Johnson-Betts, an attorney in the Voting Section (202-514-8690).

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division