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DJ 166-012-3  
93-1432

NOV 9 1993

Robert P. Westin, Esq.  
P.O. Box 98  
Gordon, Georgia 31031

Dear Mr. Westin:

This refers to the use of a majority vote requirement in any special election to fill a vacancy on the city council in the Town of McIntyre in Wilkinson 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 September 10, 1993.

We have carefully considered the information you have provided, as well as information from other interested persons. According to the 1990 Census, black persons comprise 49.8 percent of the town's population and 45.5 percent of its voting age population. Thirty-nine percent of the town's registered voters are black. The town is governed by a five-member council elected at large. Terms are concurrent and elections are by plurality vote. The town also elects a mayor using a majority vote requirement.

Our analysis reveals an apparent pattern of racially polarized voting in elections in the town. In this context, the imposition of a majority vote requirement may limit the opportunity of minority voters to elect candidates of their choice by increasing the probability of "head-to-head" contests between minority and white candidates. See, e.g., Rogers v. Lodge, 458 U.S. 613, 627 (1992); City of Port Arthur v. United States, 459 U.S. 156 (1982). Under these circumstances, we cannot say that the town has demonstrated that the adoption of a

majority vote requirement will not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

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 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 the town's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the use of a majority vote requirement in special councilmanic vacancy elections.

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 use of a majority vote requirement in vacancy elections 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, use of a majority vote requirement in councilmanic vacancy elections continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Finally, we note that a comparison of the 1971 town charter (Act No. 169) with the charter which was in effect on the Section 5 coverage date (November 1, 1964) suggests that the town may have adopted several voting changes which have not received the requisite Section 5 review. These may include the change from a four-member to a five-member council, changes in voting qualifications, and the filling of council vacancies by holding a special election. In addition, you have indicated that the practice on the coverage date was to hold mayoral elections by majority vote, although that is not specified in the pre-1971 charter. To the extent possible, we would appreciate being advised of any available information which confirms this practice (e.g., returns for pre-1971 elections in which a mayoral runoff was held). We also note that the schedule for conducting the February 6, 1993, special election should be submitted for Section 5 preclearance, but has not been. See 28 C.F.R. 51.17.

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To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of McIntyre plans to take concerning these matters. If you have any questions, you should call Special Section 5 Counsel Mark Posner, at (202) 307-1388.

Sincerely,

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division