U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

August 15, 1994

Thomas M. Boulware, Esq.
Brown, Jefferies & Boulware
P. O. Box 248
Barnwell, South Carolina 29812

Dear Mr. Boulware:

This refers to the adoption of a majority vote requirement for mayor and council for the City of Barnwell in Barnwell County, South Carolina, 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 responses to our April 4, 1994, request for additional information on June 14, August 8, 11, and 12, 1994; supplemental information was received on August 5, 1994.

We have carefully considered the information you have provided, as well as 1990 Census data, information in our Section 5 files for other submissions from the city, and information and comments from other interested parties. According to the 1990 Census, black persons constitute 43 percent of the city's population and 37 percent of its voting age population. Based upon 1994 data, it appears that approximately 30 percent of the city's registered voters are black. The city is governed by a seven-member council, consisting of the mayor, elected at large, and six councilmembers who, pursuant to the election plan precleared on April 4, 1994, will be elected from single-member districts (previously, they also were elected at large). Three of the districts have black voting-age population majorities.

Our review of elections involving city voters indicates a pattern of racially polarized voting in Barnwell that has hampered the ability of black voters to elect their candidates of choice to at-large elected offices. Moreover, it appears that political participation among black voters is depressed, attributable largely to a history of racial discrimination which continues to be reflected in the disparate socio-economic conditions that exist between the city's black and white residents.

Accordingly, the adoption of a majority vote requirement for mayor will make it more difficult for black voters to elect their mayoral candidate of choice by increasing the probability of "head-to-head" contests between black and white candidates. See, e.g., Rogers v. Lodge, 458 U.S. 613, 627 (1982); City of Port Arthur v. United States, 459 U.S. 156 (1982). Thus, we cannot say that the city has demonstrated that the use of a majority vote requirement for the at-large elected mayor will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

The city asserts that state law requires the use of a majority vote requirement for the at-large elected mayor if it also is used for councilmembers elected from single-member districts. We recognize that a majority vote requirement in a single-member district system does not raise the same concerns as its use in at-large elections. However, in determining whether to adopt this requirement for all elected positions, city officials did not seek the views of the minority community (e.g., the city did not appoint minority persons to the study committee for the new method of election, which appears to have recommended the adoption of the majority vote requirement). When their views were sought post-adoption, black leaders advised the city that a plurality vote requirement for both mayor and council would be preferable.

The city also states that it adopted the majority vote requirement because it "wanted to return to the method of election that it had enjoyed prior to the Federal Court Order." This "method of election," however, was the city's use of a majority vote requirement for both the mayor and city council to which the Attorney General interposed a Section 5 objection on August 31, 1984. Notwithstanding our objection, the city continued to use a majority vote requirement until enjoined by the referenced court order in 1986.

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). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city'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 insofar as it applies to mayoral 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 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. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the use of a majority vote requirement continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Barnwell 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,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

February 13, 1995

Thomas M. Boulware, Esq.
Brown, Jefferies & Boulware
P.O. Box 248
Barnwell, South Carolina 29812

Dear Mr. Boulware:

This refers to the request by the City of Barnwell in Barnwell County, South Carolina, that the Attorney General reconsider the August 15, 1994, objection under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to the majority vote requirement as it applies in mayoral elections, and grant Section 5 preclearance to the postponement of the 1994 city election, pending resolution of the city's reconsideration request. We received your request for reconsideration of the objection, and your response to our request for additional information regarding the postponement of the city election, on December 15, 1994; supplemental information was received on February 9 and 13, 1995.

On December 6, 1993, the city adopted an ordinance which provided for a change in the method of electing the six councilmembers and mayor from at large to election from six single-member districts and the mayor at large. The ordinance also provided for a districting plan, a change from concurrent terms to staggered terms, the implementation schedule for staggering of terms, and a change from plurality vote to majority vote for election to all city offices. On April 4, 1994, the Attorney General interposed no objection to these changes except to the majority vote as it applies to mayoral elections.

Pursuant to 28 C.F.R. 51.48 of the Procedures for the Administration of Section 5, we have reconsidered our earlier determination in this matter based on the information you have provided, as well the other information in our files, comments from other interested persons, and our analysis of the electoral circumstances in the City of Barnwell.

Our analysis on reconsideration indicates that the August 15, 1994, objection interposed to the majority vote requirement as it applies to mayoral elections should be and is hereby withdrawn. With regard to the postponement of the 1994 city election for mayor and council, the Attorney General does not interpose any objection to this change. 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 these voting changes. See 28 C.F.R. 51.41.

In view of the withdrawal of the objection, we understand the city agrees that the legal method of election in Barnwell under federal and state law is embodied in the December 6, 1993, ordinance that now has been precleared in its entirety. We note that because of the postponement of the 1994 election, the city's current mayor and council are holding over past the expiration of their terms of office and, accordingly, the city must now promptly develop and seek preclearance under Section 5 for a schedule for holding a special election to implement the precleared method of election as soon as practicable. See 28 C.F.R. 51.17. Please contact Chris Herren, (202-514-1416), an attorney in the Voting Section, as soon as possible to inform us of your plans to schedule this election.

Sincerely,

Loretta King

Loretta King
Acting Assistant Attorney General
Civil Rights Division