

D.J. 100-012-3  
V3168; V3169

JUL 7 1975

Honorable Harold L. Deavenport  
Mayor, City of Alabaster  
P. O. Box 177  
Alabaster, Alabama 35017

Dear Mayor Deavenport:

This is in reference to the 11 annexations to the City of Alabaster, Shelby County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was completed on May 8, 1975.

In examining annexations under Section 5 of the Voting Rights Act, it is incumbent on the Attorney General to determine whether the annexations, either in purpose or effect, result in racial discrimination in voting. In making this evaluation we apply the legal principles which the courts have developed in the same or analogous situations. Moreover, it is also significant that Section 5 only prohibits implementation of changes affecting voting and provides that such changes may not be enforced without receiving prior approval by the Attorney General or by the District Court for the District of Columbia. Our proper concern then is not with the validity of the annexations but with the changes in voting which proceed from them.

Based on the 1970 Census data regarding the City of Alabaster, and the data regarding the annexations included in your submission and the information which you supplied, the Attorney General will interpose no objection to those annexations of areas which are not

populated (annexation numbers 2, 7, 9 and 11) since the addition of these areas do not affect voting within the City of Alabaster. Nor will objection be interposed to annexation number 13, since the effect of that annexation on voting in the City of Alabaster appears not to adversely affect blacks' voting rights.

The remaining 6 of the 11 annexations were considered to be of major importance in the context of all the submitted annexations, and were carefully examined in the light of federal court decisions which have involved questions of annexations' racially dilutive effect where political subdivisions conduct elections on an at-large basis. City of Richmond v. United States, 43 U.S.L.W. 4085 (June 24, 1975); City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972) aff'd 415 U.S. 902 (1973). Under the procedural guidelines for the administration of Section 5 the burden of proving that changes affecting voting have no racial purpose and have had or will have no racial effect lies with the submitting authority. Georgia v. United States, 411 U.S. 526 (1973); City of Richmond v. United States, supra; City of Petersburg v. United States, supra.

According to the data we examined the major annexations under consideration now include 1170 white people and no black people to the City of Alabaster, and there is no possibility of future annexation of areas with commensurate black population. Our information regarding elections in the city demonstrates that the city elects its councilmen at-large with a majority requirement and a numbered post system, and that there is a pattern of racial bloc voting in city elections. Moreover, the information we examined indicates that blacks are located within the City of Alabaster in a cognizable residential area.

Under these circumstances, commensurate with the decisions cited above we cannot conclude that the major annexations taken together will not have a dilutive effect on voting in Alabaster. Accordingly, I must on behalf of the Attorney General interpose an objection to the submitted annexation numbers 1, 3, 4, 5, 6 and 8.

In City of Petersburg v. United States, supra, the court stated at page 1931:

The Court concludes that . . . in accordance with the Attorney General's findings, that this annexation can be approved only on the condition that modifications calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters are adopted, i.e., that the plaintiff shift from an at-large to a ward system of electing its city councilmen.

In City of Richmond v. United States, supra, at 4368, the court said:

Petersburg was correctly decided. On the facts there presented, the annexation of an area with a white majority, combined with at-large councilmanic elections and racial voting, created or enhanced the power of the white majority to exclude Negroes totally from participation in the governing of the city through membership on the city council. We agreed, however, that that consequence would be satisfactorily

obviated if at-large elections were replaced by a ward system of choosing councilmen. It is our view that a fairly designed ward plan in such circumstances would not only prevent the total exclusion of Negroes from membership on the council but would afford them representation reasonably equivalent to their political strength in the enlarged community.

In this connection, should the city undertake to elect its councilmen from single-member districts the Attorney General will reconsider his determination in this matter. We note that it is our understanding that the establishment of single-member districts in Alabaster was a topic of discussion in the city prior to the most recent city elections, and that the use of such districts continues to be a matter of interest to present city officials.

As you know, the city's 11 annexations were submitted simultaneously under Section 5 despite the fact that the individual annexations were accomplished throughout the years 1971, 1972 and 1973. I am not unmindful of the fact that our consideration under Section 5 regarding the individual annexations may have resulted in a judgment different from that announced above, had each annexation been submitted promptly upon its completion. However, once confronted with the simultaneous submission of 11 annexations, and faced with the question of whether an impermissible dilution under the law has occurred in Alabaster as the result of annexation, we have no alternative but to examine the population of the annexed territory as of the time of submission and to collectively consider the annexations to determine their effect under judicially enunciated standards.

As set out in the Section 5 guidelines, 28 C.F.R. 51.23 and 51.24, we will examine any information not previously available to you, or any facts which we may not have considered, in support of a request to reconsider the objection interposed above, including such information as the results of any studies or other documentation regarding the feasibility of creating councilmanic districts in the City of Alabaster.

Of course, as provided by Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these annexations have neither the purpose nor effect of denying or abridging the right to vote on account of race or color. However, until such a judgment is rendered by that court, or until the objection has been withdrawn by the Attorney General, the legal effect of the objection by the Attorney General is to render the annexations in question legally unenforceable insofar as they affect voting in the City of Alabaster.

Sincerely,

**J. Stanley Pottlager**  
**Assistant Attorney General**  
**Civil Rights Division**