U.S. Department of Justice

Civil Rights Division

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

DEC 31 1990

David R. Boyd, Esq.
Balch & Bingham
P. O. Box 78
Montgomery, Alabama 36101

Dear Mr. Boyd:

This refers to the annexation (adopted by an October 23, 1990, referendum) to the City of Valley in Chambers County, Alabama, 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 initial submission on November 1, 1990, supplemental information was received on November 21, 1990.

We have considered carefully the materials furnished by you, as well as comments and information from other interested parties. According to information you have provided, the population of the area proposed for annexation consists of 243 persons, only two of whom are black. Thus, the addition of this area to the city will necessarily have the effect of diluting minority voting strength in the existing city. However, because the city was incorporated after the 1980 Census was conducted, our ability to determine the degree of this dilution has been hampered substantially by the absence of detailed census data for the city. Estimates we have received vary significantly, but there appears to be no information currently available which would support a conclusion that the actual dilution of minority voting strength effected by the submitted annexation is insignificant.

In your submission you represent that the impact of this annexation on minority voting strength in the City of Valley is not a matter of concern because of the city's obligation, stemming from a consent decree in Dillard v. Crenshaw County (City of Valley), No. 85-T-1332-N (M.D. Ala. Dec. 12, 1988), to convert, following the availability of 1990 Census data, from the existing at-large system to a single-member districting plan incorporating, if possible, at least one district with a black voting majority.

Furthermore, we note that while city representatives have expressed confidence that Valley will be able to satisfy the Dillard consent decree with a plan that includes at least one black voting majority district, the absence of current census information leaves this assertion unsupported. Of course, we recognize that the city must await the release of the 1990 Census before it undertakes the development of a districting plan but, in those circumstances, the only system under which we can analyze the submitted annexation is that of at-large elections which we understand continues in existence until replaced by a single-member district plan. In that context, a racially dilutive annexation, such as appears to be involved here, can be precleared only if the election system is modified in such a way as to afford the affected minority group representation "reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, 422 U.S. 358, 370 (1975). Here, the city not only has failed to show that black voting strength would be fairly recognized in the enlarged city under the existing at-large system, but the city has failed also to demonstrate that blacks would be represented fairly under a single-member districting plan.

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 your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the annexation adopted by the October 23, 1990, referendum.

Of course, 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. 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. In this regard, we again note City of Richmond where the Supreme Court observed that a dilution such as that involved here may nevertheless pass Section 5 muster "as long as the post-annexation electoral system fairly recognizes the minority's political potential." City of Richmond v. United States, supra, 422 U.S. at 478. We agree that compliance with the requirements of the Dillard consent decree presents the city with the opportunity to achieve the goal identified in Richmond. Therefore, we would be willing to reconsider this objection at the time Section 5 preclearance is sought for the single-member districting plan to be developed by the city after the 1990 Census is released. 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 insofar as it affects voting. See 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 Valley plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), Attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division