t. 7/30/73
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JSP:RS:peb
DJ 166-012-3

AUG 14 1973

Mr. Lawrence C. Walker, Jr.
Attorney for the City of Perry
Post Office Drawer A
Perry, Georgia 31069

Dear Mr. Walker:

Reference is made to your submission under Section 5 of the Voting Rights Act of 1965 concerning the 1970 change imposing a plurality requirement for municipal elections and the 1973 change imposing a majority requirement for municipal elections. The sixty days which the Attorney General has to interpose an objection to the implementation of your proposed plan expires on August 14, 1973.

The Attorney General does not interpose an objection to the 1970 change imposing a plurality requirement for municipal elections. We feel a responsibility to point out, however, that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar subsequent judicial action to enjoin the enforcement of such changes.

The other submitted change requires that candidates for mayor and city councilmen receive a majority vote to be elected. Our analysis has

cc:Records

demonstrated that where, as in the City of Perry, there is significant participation in the political process by the black community, a majority requirement has the practical effect of decreasing the potential for minority voters to elect candidates of their choice. Furthermore, the imposition of a majority requirement on a pre-existing designated post system as exists in the City of Perry, similarly reduces the potential voting strength of minority groups.

In addition, recent court decisions dealing with issues of this nature, indicate that the combination of numbered posts and majority vote requirements might have the effect of abridging minority voting rights. Graves v. Barnes, 343 F. Supp. 704 (W.D. Tex., 1972), aff'd sub nom White v. Regester, 41 U.S.L.W. 4885 (1973); see Whitcomb v. Chavis, 403 U.S. 124 (1971). We think that the implementation of a majority requirement in the City of Perry when combined with the already existent numbered post system would have the effect of abridging minority voting strength.

Based on the above analysis, we are unable to conclude as we must under the Voting Rights Act that the 1973 change will not have a discriminatory racial effect on voting. Consequently, the Attorney General must interpose an objection to the submitted provisions for a majority requirement in city council and mayoralty elections.

Of course, as provided for by Section 5, you have the alternative of instituting an action in the United States District Court for the District of

Columbia for a declaratory judgment that the change objected to does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

D.J. 166-012-3

OCT 18 1973

Mr. Lawrence C. Walker, Jr.
Attorney for the City of Perry
Post Office Drawer A
Perry, Georgia 31069

Dear Mr. Walker:

This is in reference to your meeting of October 2, 1973, with members of my staff concerning the objection interposed by the Attorney General on August 14, 1973, to the reinstatement of a majority requirement for the election of mayor and aldermen in the City of Perry.

We appreciate the arguments made in support of your request for reconsideration and concede that the consequence of reinstating the plurality requirement which resulted from the 1970 change may have been unintended. The 1970 legislation, however, did constitute a change in voting procedure within the meaning of Section 5 of the Voting Rights Act, and therefore required Section 5 review.

The 1973 change creating a majority requirement is likewise a change in voting within the meaning of Section 5 and one which the courts have held to have a dilutive effect on minority voting strength particularly when combined with a numbered post requirement as in Perry. See Graves v. Barnes, 343 F. Supp. 704 (W.D. Tex. 1972), aff'd sub nom.; White v. Regester, 41 U.S.L.W. 4385 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971). Thus, while the

1973 change back to a majority requirement may have been necessitated by the 1970 unintentional reinstatement of the plurality requirement, Section 5 is still applicable. In applying the law as developed by the courts with respect to changes such as this, the Attorney General cannot conclude that the 1973 change does not have a discriminatory effect even though it does not appear to have been inspired by a discriminatory purpose.

Of course, as I indicated to your previously, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the change objected to does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division