D.J. 166-012-3

MAY 22 1974

Mr. John Tye Ferguson
Webb, Parker, Young & Ferguson
Fulton County Attorneys
927 Fulton Federal Building
Atlanta, Georgia 30303

Dear Mr. Ferguson:

This is in reference to your submission of Act No. 130 of the 1973 Georgia General Assembly which increased the composition of the Fulton County Board of Commissioners from three to seven members and which provided for various qualifications and procedures under which candidates qualify for and are elected to the expanded Board, as well as Act No. 805 of the 1974 Georgia General Assembly which modified the geographical and population characteristics of the Commissioner Districts. Your submission was received on March 23, 1974.

The Attorney General does not interpose an objection to the increase of the Fulton County Board of Commissioners from three to seven members nor to the provisions for election from single-member districts. However, we must point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such a change.

After a careful examination of all the available facts and circumstances and an analysis of recent court decisions, we are unable to conclude, as we must under the Voting Rights Act, that certain aspects of the present submission, namely, the numbered post and majority vote requirements, in the context of at-large election for three of the Commissioners, will not have a racially discriminatory effect. Recent Supreme Court decisions, to which we feel obligated to give great weight, indicate that the combination of the above features would have the effect of abridging minority voting rights in Fulton County. The reasoning of these recent cases is illustrated by the Supreme Court's decision in June of 1973 which held that the multi-member election system, numerical post and majority vote requirement of Dallas and Bexar Counties, Texas, tended to abridge minority voting power and therefore violated the Fourteenth Amendment. White v. Regester, 412 U.S. 755 (1973). See, also, Whitcomb v. Chavis, 403 U.S. 124 (1971).

For the foregoing reasons, I must on behalf of the Attorney General interpose an objection to the combination of the at-large, numbered post and majority vote features mentioned above. We have reached this conclusion reluctantly because we fully understand the complexities involved in devising a plan of this nature so as to satisfy the needs of the county and its citizens and simultaneously, to comply with the mandates of the Federal Constitution and laws. We are persuaded, however, that the Voting Rights Act compels this result.

Nor do we find as significantly affecting the basis of our objection the fact that the three at-large members may be considered a carry-over feature from the old plan. The recent court decision in Boer v. United States, Civ. Action No. 1495-73, D.D.C. March 15, 1974, makes it clear that in considering a redistricting scheme such as this a review of those aspects which remain constant, as well as those which actually reflect a change, is appropriate. Said that court (Slip opinion, pp. 77-78):

> We are met at the threshold by the City's charge that that issue [of the two at-large council seats] is not properly in this case. As they state, the at-large election has been the vehicle for filling two councilmanic seats since 1954, and the redistricting plan would provide nothing different in that regard. Since Section 5 only intercepts changes in voting procedures occurring since November 1, 1964, and since this court's concern is statutorily limited to an application of Section 5, the City argues that any additional at-large election problem is beyond the ambit of Section 5 and, by the same token, has no place in this litigation.
>
> We think, however, that the issue tendered by the intervenors is properly and unavoidably before us. The impact of New Orleans' redistricting plan is not to be determined in a vacuum, nor on the basis of just some of the facts, but in the context of all circumstances touching the right to

> vote in councilmanic elections. The plan, if approved, would become a part of the machinery for electing the City Council, and would be instrumental in the choice of five of its members. Another part of the machinery is the at-large election for the two remaining members of the Council. The interrelationship of these two parts is as relevant as any other circumstances bearing on the effect which the plan will have. The Council is a seven-member--not a five-member--body, and at-large voting for two of its members is an important aspect of the backdrop against which operation of the plan must be viewed. If at-large voting and the redistricting plan contribute together to diminish the strength of the black vote in more ways than one, it is our responsibility to say so.

See, also, Georgia v. United States, 411 U.S. 526, 531 (1973).

Of course, Section 5 permits seeking approval of all changes affecting voting by the United States District Court for the District of Columbia irrespective of whether the changes have previously been submitted to the Attorney General.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

JUL 2 1976

Mr. John Tye Ferguson
Webb, Parker, Young & Ferguson
Fulton County Attorneys
927 Fulton Federal Building
Atlanta, Georgia 30303

Dear Mr. Ferguson:

This is in reference to our reconsideration of the May 22, 1974, objection under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, to certain portions of Act No. 130 of the 1973 Georgia General Assembly and Act No. 805 of the 1974 Georgia General Assembly regarding the composition and election of members to the Fulton County Board of Commissioners. This reconsideration was undertaken both on our own motion and in response to your April 1, 1976, request that we do so in light of the United States Supreme Court's recent decision in Beer v. United States, 44 U.S.L.W. 4435 (U.S. March 30, 1976).

In Beer, the Supreme Court held that the two at-large councilmanic seats in the City of New Orleans which had remained unchanged since 1954, without being reconsidered or readopted, were beyond the reach of Section 5. The Court also went on in Beer to hold that the reapportionment system established for the city council, a system under which the black community constituted a population majority in two of the five single-member districts and a clear majority of the registered voters in one, did not violate Section 5's racial effect standard. While we do not believe, as you suggest, that the three at-large seats set forth

in the above-mentioned legislation were beyond the scope of Section 5, we nonetheless feel that our overall determination relative to racial effect is in light of the Beer decision no longer appropriate. Accordingly and pursuant to reconsideration guidelines promulgated for the administration of Section 5, 28 C.F.R. 51.23 through 51.25, the objection interposed in my letter of May 22, 1974, is hereby withdrawn.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

DEC 1 1975

Mr. John Tye Ferguson
Wess, Parker, Young & Ferguson
Fulton County Attorneys
927 Fulton Federal Building
Atlanta, Georgia 30303

Dear Mr. Ferguson:

This is in reference to your request that the Attorney General reconsider his May 22, 1974, objection under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to certain portions of Act No. 130 of the 1973 Georgia General Assembly and Act No. 805 of the 1974 Georgia General Assembly regarding the composition and election of members to the Fulton County Board of Commissioners. Your request for reconsideration was received on October 1, 1975.

We have given careful consideration to the information which you have recently forwarded as well as information and comments from interested parties. In addition we have utilized the information and data which you had previously provided this office in connection with our original examination of the legislative enactments in question.

While there are, as you indicate, certain factual differences between Fulton County and the situation that existed in Dallas and Bexar Counties, Texas, we are nevertheless unable to conclude that

as in White v. Regester, 412 U.S. 755 (1973), a racially dilutive effect would not exist in the factual context that exists locally where three members of the Fulton County Commission are elected on an at-large basis and subject to both a numbered post and a majority vote requirement. See Beer v. United States, 374 F. Supp. 363 (1974). This we believe to be particularly true where, as here, racial bloc voting appears to be prevalent in the white community. Under these circumstances, we do not perceive a basis for the withdrawal of the Attorney General's objection.

Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that these enactments have neither the purpose nor the effect of denying or abridging the right to vote on account of race irrespective of whether the changes have previously been submitted to the Attorney General.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division