JUN 2 7 1978

Mr. James B. Blackburn
Wiseman, Blackburn & Futrell
Attorneys at Law
P. O. Box 8501
Savannah, Georgia 31402

Dear Mr. Blackburn:

This is in reference to the annexation and change in method of election for the City of Savannah, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on April 28, 1978.

Section 5 requires the Attorney General to examine submitted changes affecting the electoral process to determine whether they have the purpose or will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In making this evaluation, we apply the legal principles which the courts have developed in the same or analogous situations. 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 an annexation but with the changes in voting which proceed from it.

This annexation was carefully examined in the light of federal court decisions which have involved questions of annexations' dilutive effect where political subdivisions conduct elections on an at-large basis. City of Richmond v. United States, 422 U.S. 358 (1975); City of

Petersburg v. United States, 344 F. Supp. 1021 (D.D.C. 1972), affirmed, 410 U.S. 962 (1973). Our analysis, based on the materials and information you have provided as well as on information provided by and the views of other interested persons, has revealed that, according to 1970 census statistics, prior to the annexation blacks constituted 45% of the population of the City of Savannah; after annexation blacks will comprise 40% of the population of the City. This annexation thus results in a significant dilution of black voting strength.

Since this annexation is taking place in conjunction with a change in the method of electing the governing body of the City of Savannah, we have also carefully considered whether the dilutive effect of this annexation has been sufficiently minimized by the change in method of election to enable the annexation to satisfy the judicial standards under Section 5. As the Supreme Court stated in City of Richmond v. United States, 422 U.S. at 378, dilutive annexations may be approved "as long as the post-annexation electoral system fairly recognizes the minority's political potential" and as the court stated in City of Petersburg v. United States, at 1031

> . . . annexation(s) 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.

These are the standards which we use to judge whether the adverse effect of an annexation has been neutralized.

With this standard in mind, we turn to a consideration of the proposed change in method of election. Our analysis shows that presently the governing body of the City of Savannah is composed of a mayor and six councilmen, elected at-large for non-staggered four year terms; positions are not numbered, and although

a majority vote is required by §34A-1407 of the Georgia Municipal Election Code, it has never been necessary to hold a run-off election. Generally, city elections have involved two slates of candidates. In 1970, one black was included on the winning slate and in 1974 two blacks were on the winning slate. Blacks thus at present have two members on the six-member council.

In contrast, the proposed method of election provides for an eight-member council composed of six members elected from single-member districts and two members elected at-large. The terms would remain four years and would not be staggered; however the two at-large seats would be numbered and a majority vote is required for all of the eight positions. Provisions for the election of the mayor remain unchanged.

Under the proposed plan, blacks would have a majority, both in population and registered voters, in two of the six districts. It appears that in a third district blacks would constitute 54% of the population but less than 50% of the registered voters and our experience has been that in such a district the eligible voting age black population likely would be less than 50%. In addition, our analysis reveals indications of racial bloc voting in city elections.

Under these circumstances, and with two council members being elected at-large for designated posts by the newly enlarged white majority of the city-wide electorate, the likely result would be that blacks could elect only two members of their choice to an eight-member council. Thus, we believe that this at-large feature of the plan has the potential for unnecessarily diluting the black voting strength in the City of Savannah and does not meet the standard laid down by the Supreme Court in Richmond. This is especially true where, as here, there has been no showing that the alternative of electing all the members of the council from single-member districts is not readily available.

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. In light of the considerations discussed above, we are unable to conclude, as we must under the Voting Rights Act, that the burden has been met in this instance. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the implementation of the proposed changes occasioned by Act 1008 of the 1978 Georgia General Assembly.

Consistent with the decisions in Petersburg and Richmond, the Attorney General will reconsider his objection to the annexation should the City of Savannah undertake to elect all of the members of its city council from fairly drawn single-member districts. In addition, you have the right under the Procedures for the Administration of Section 5, 28 C.F.R. 51.21(b), 51.23, and 51.24 to request the Attorney General to reconsider this objection, and you have the right provided by Section 5 to seek a declaratory judgment from the United States District Court for the District of Columbia that the voting changes resulting from Act 1008 have neither the purpose nor the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. However, until the objection has been withdrawn by the Attorney General or such a judgment rendered by the District Court, the legal effect of the objection by the Attorney General is to render such changes legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

DJ 166-012-3
A6074-77 ; A7842

OCT 2 1978

Mr. James B. Blackburn
Wiseman, Blackburn & Futrell
P.O. Box 8501
Savannah, Georgia 31402

Dear Mr. Blackburn:

This is in reference to your request for reconsideration of the objection interposed pursuant to Section 5 of the Voting Rights Act of 1965, as amended, to the annexation and change in method of election for the City of Savannah, Georgia, and to the referendum on the annexation and change in method of election provided by Georgia Act No. 1003 (1978), submitted to the Attorney General pursuant to Section 5. Your request for reconsideration was completed on July 17, 1978, and your submission of the referendum was received on August 28, 1978.

As we explained in our letter of June 27, 1978, by which the objection was interposed, dilutive annexations may be approved "as long as the post-annexation electoral system fairly recognizes the minority's political potential." City of Richmond v. United States, 422 U.S. 358, 378 (1975). At the time of our letter we concluded that the city had not met its burden of proving that the new electoral system satisfied this standard. In particular, the information available to us at that time did not persuade us that the newly-adopted system fairly recognized the political potential of blacks in the post-annexation city since that information did not support a conclusion that blacks would be able to choose a representative of their choice in District 4, which would have given them the potential for controlling three of the eight council positions. The new information you have provided indicates that the black percentage in District 4 is significantly higher than the 54 percent we believed to be the case at the time of our previous letter and is increasing.

According to the information we now have, therefore, there is substantial evidence that blacks likely will be able to elect representatives of their choice from three of the six councilmanic districts, or a proportion of the council that approximates the black percentage in the post-annexation city. Under these circumstances, we are satisfied that "the post-annexation electoral system fairly recognizes the minority's political potential" under the terms of the Richmond decision. Accordingly, on behalf of the Attorney General, I am withdrawing the objection interposed on June 27, 1978, to the annexation and change in method of election.

Finally, the Attorney General does not interpose an objection to the referendum provided by Act 1008. However, I feel a responsibility to 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 enforcement of such change.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division