DJ 166-012-3
X9979

OCT 17 1978

Mr. George H. Wynn
Attorney at Law
Post Office Box 147
Lakeland, Georgia 31635

Dear Mr. Wynn:

This is in reference to Act No. 1053 (House Bill No. 1278), 1974 General Assembly of Georgia, relating to the change to a numbered place system for the election of members of the City Council of Lakeland, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on August 18, 1978.

We have given careful consideration to the information furnished by you as well as information and comments from other interested parties, and relevant court decisions. At the outset, we note that the use of numbered places in an at-large electoral system has been criticized in judicial decisions because of the potential for diluting the voting strength of minority group members inherent in such a system. For instance, the court in Dunston v. Scott, 336 F. Supp. 206, 213 n.9 (N.D.N.C. 1972), explained:

> It is clear that the numbered seat law may have the effect of curtailing minority voting power. In a true at large election, if the majority spreads its vote around and the minority single shot votes, the minority strength is concentrated, thus increasing their chance of electing. However, if the minority candidate is forced to run against a specific candidate or candidates for a specific seat, the majority can readily identify for whom they must vote in order to defeat the minority candidate.

The potentially discriminatory nature of a numbered place system was also recognized in White v. Regester, 412 U.S. 755, 766-67 (1973); Zimmer v. McKeithen, 485 F.2d 1297, 1305 (5th Cir. 1973), aff'd without approval of the constitutional views expressed by the Court of Appeals' sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976); and Blacks United for Lasting Leadership v. City of Shreveport, 71 F.R.D. 623, 628, 632, 636 (W.D. La. 1976).

The information we have been provided does not demonstrate that the numbered place system's recognized potential for diluting minority voting strength does not exist in the City of Lakeland. Although approximately 30 percent of the residents of the city are black, only one black has been elected to the council. In 1976 two black candidates were defeated under the new system in contests against white candidates, and no black presently serves as a member of the city council. These facts suggest that blacks are less than full participants in the city's political process, and that the addition of a potentially discriminatory electoral device such as the numbered place will further inhibit their full and equal participation in that process.

In your letter of August 16, 1976, you state that "the change to running by place was made because many voters would only vote for one or two of their favorites who were running and would not vote for the others." We note, however, that this characteristic of the numbered post requirement is the very feature that prompted the Court in Beason, supra, to find it "curtailing (of) minority voting power."

Under Section 5 of the Voting Rights Act the burden is on the submitting authority to establish that the submitted change 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. See Georgia v. United States, 411 U.S. 526 (1973); (28 C.F.R. 51.19). On the basis of the judicial decisions and factual circumstances that exist in Lakeland, the Attorney General is unable to conclude that this burden has been met here. Therefore, on behalf of the Attorney General, I must interpose an objection under Section 5 to the use of the numbered place system in the election of members of the City Council of the City of Lakeland.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the numbered place system legally unenforceable.

In view of the December 6, 1978, elections for city council positions please inform us within 20 days of your receipt of this letter of the steps the City intends to take to resolve this matter. If you have any questions concerning this matter you may feel free to contact Mr. David H. Hunter (202/739-3340). Please refer to File #5979 in any written response so that your correspondence will be properly channelled.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

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CX9979

DEC 6 1978

Mr. George H. Wynn
Attorney at Law
Post Office Box 147
Lakeland, Georgia 31635

Dear Mr. Wynn:

This is in reference to your request for reconsideration of the objection pursuant to Section 5 of the Voting Rights Act, as amended, to the adoption of the numbered place system for councilmanic elections in the City of Lakeland, Georgia. The objection was interposed on behalf of the Attorney General on October 17, 1978; your request for reconsideration was received on October 30, 1978, and information supplementing the request was received on November 15, 1978.

Your letter of October 26, 1978, takes the position that the adoption of the numbered place system does not constitute a change in a voting practice within the meaning of Section 5 because that system is authorized by Section 34A-702 of the Georgia Municipal Election Code. However, Section 5 is concerned with actual voting practices and not only with the statutory bases for voting practices. See Perkins v. Matthews, 400 U.S. 379 (1971). Hence, it is our conclusion that the change by the City of Lakeland is properly reviewable under Section 5.

Pursuant to your request, however, we have undertaken a substantive reconsideration of the numbered place system adopted by the City of Lakeland, in which we have reanalyzed the information that was previously before us and carefully studied the election returns for the December 5, 1978 election that you provided to us. On the basis of this reconsideration we now conclude that continuing the

objection is no longer warranted. Accordingly, on behalf of the Attorney General, I am withdrawing the objection previously interposed. However, we 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 the enforcement of such change.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division