



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

August 2, 1993

Roy E. Paul, Esq.
Bouhan, Williams & Levy
P.O. Box 2139
Savannah, Georgia 31498-1001

Dear Mr. Paul:

This refers to the 1992 change in the method of election from at large to a system of two double-member election districts and one single-member election district, the 1993 districting plan, and the implementation schedule therefor for the City of Millen in Jenkins County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. We received your response to our request for additional information concerning the change in the method of election on May 14, 1993; we received your submission of the 1993 districting plan and implementation schedule therefor on June 1, 1993; supplemental information was received on July 1, 1993.

We have carefully considered the information you have provided, as well as information provided by other interested persons. The City of Millen has a total population of 3,808, of whom 58.2 percent are black, and the black share of the voting age population in the city is 52 percent. The proposed method of election and districting plan provide that Districts 1 and 2 shall elect two members each and that District 3 shall elect one member. District 1 has a black total population of 89.8 percent and a black voting age population of 89.1 percent; District 3 has a black total population of 65.3 percent and a black voting age population of 59.9 percent. District 2 has a majority-white population.

The Attorney General does not interpose any objection to the proposed change in the method of election from at large to a system of two double-member election districts and one single-member election district and the 1993 districting plan therefor.

However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of these changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We are unable to reach the same conclusion with regard to the proposed implementation schedule, which provides that Districts 1 and 2 will each elect one member in 1993 and that Districts 1, 2 and 3 will each elect one member in 1995. The information provided in your submission shows that two incumbents reside in District 1 and three incumbents reside in District 2, leaving no incumbent in District 3. Thus, the effect of the decision to delay an election in District 3 (65.3% black in population) until 1995 would be to leave that District without representation, while District 2 (74.9% white in population) would have three representatives between 1993 and 1995.

This effect could have been avoided by holding elections this year for all council seats under the new election system and staggering the terms subsequently, as the county commission and county school board in Jenkins County, facing similar circumstances, have proposed to do. Alternatively, the city could have fulfilled its stated interest in allowing incumbents to serve the balance of their terms and still hold an election in District 3 in 1993. Your submission has not identified any other considerations that explain the delay in holding an election in District 3 until 1995.

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. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In view of the concerns noted above, however, I am unable to conclude, as I must under the Act, that the City of Millen has carried its burden with regard to the proposed implementation schedule. Accordingly I must, on behalf of the Attorney General, interpose an objection to the proposed implementation schedule.

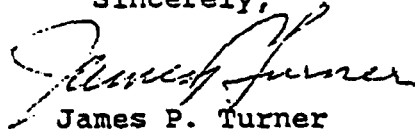
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed implementation schedule continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

- 3 -

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Millen plans to take concerning this matter. If you have any questions, you should call Robert A. Kengle (202-514-6196), an attorney in the Voting Section.

Since the Section 5 status of the instant submission has been placed at issue in Green v. Bragg, No. 691-078 (S.D. Ga), we are providing a copy of this letter to the court and plaintiffs' counsel of record in that case.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable B. Avant Edenfield
United States District Judge

Counsel of Record

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