



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 13, 1993

James R. Lewis, Esq.  
Lewis, Taylor & Lee  
P.O. Box 1027  
LaGrange, Georgia 30241

Dear Mr. Lewis:

This refers to Act No. 57 (1993), which changes the method of electing the city council from six members elected at large to four members elected from single-member districts and two members elected at large from numbered positions, provides for a districting plan, adopts a district durational residency requirement, and provides the implementation schedule therefor; Act No. 60 (1993), which adopts nonpartisan elections; and to Ordinance No. 93-36, which prohibits nonpartisan primaries, for the City of LaGrange in Troup County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on October 12, November 30, and December 2, 9 and 10, 1993.

We have carefully considered the information you have provided as well as 1990 Census data and information and comments received from other interested persons. According to the 1990 Census, black residents comprise 42 percent of the total population and 37 percent of the voting age population in the City of LaGrange. As of November 1993, 25 percent of the city's registered voters were black persons. The city is governed by a mayor and six councilmembers elected at large to designated positions by majority vote for four-year, staggered terms. Under the city's existing at-large electoral system, one black person has been elected to the city council. That member has served continuously since 1970.

With respect to Act No. 60 (1993), which adopts nonpartisan elections, and Ordinance No. 93-36, which prohibits nonpartisan primaries, the Attorney General does not interpose any objection to the specified changes. However, we note that the failure of

the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43)

We are unable to reach the same conclusion with respect to the changes embodied in Act No. 57. Under the city's proposed system, four councilmembers would be elected from single-member districts, with two councilmembers and the mayor elected at large to designated posts by majority vote. Two of the single-member districts would have black voting age population majorities greater than 62 percent.

Our analysis of the city's districting process shows that consideration of changing the at-large system began after concerns were raised by the black community that the system unfairly limited opportunities for black voters to elect candidates of choice to the city council. Debate focused on whether the proposed plan or a plan with six single-member districts should be adopted. Opponents of the proposed plan argued that its retention of two at-large seats with designated posts would mean that, given patterns of polarized voting, black voters would have an opportunity to elect candidates of their choice only in the two black-majority single-member districts. Nevertheless, a majority of the city council repeatedly voted in favor of the proposed electoral system over the opposition of black leaders, a minority of the council (including the only black member) and the mayor, all of whom preferred a system that would have six single-member districts and the mayor elected at large.

The city contends that black voters would be able to elect candidates of their choice to the at-large seats. Our analysis reveals that the present-day effects of the history of racial discrimination in LaGrange and in Troup County result in the disparities that exist in the socio-economic status between black and white citizens and lower black registration rates. Moreover, the electoral history in the city and county suggests the existence of a pattern of racially polarized voting in the city. In light of these circumstances, the city has not supported its conclusions that black voters will have an opportunity to elect a candidate of their choice to either of the numbered at-large positions.

Our analysis shows that the protection of the interests of incumbents played a significant role in the decision of the council majority, all of whom reside in the same proposed single-member district. The retention of the staggered at-large seats would permit most of the incumbents to run for reelection without

having to compete against one another. While we recognize that the desire to protect incumbents may not in and of itself be an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Where, as here, the protection afforded incumbents appears to have been provided at the expense of black voters, the city bears a heavy burden of demonstrating that its choices are not tainted, at least in part, by an invidious racial purpose.

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 light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the method of election for the LaGrange city council.

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 voting changes occasioned by Act No. 57 continue to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the districting plan and the other proposed changes in Act No. 57 are related to the objected-to method of election, the Attorney General will make no determination regarding these changes at this time. 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the City of LaGrange plans to take with respect to these matters. If you have any questions, feel free to call Gaye Hume (202-307-6302), an attorney in the Voting Section.

Sincerely,



James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division