DJ 166-012-3
V8700-8706; C5112, 5114-5116, 5118,
C5120, 5121; C6379; C7739; C8024

APR 7 1980

A. Louis Singleton, Esq.
Gaylord, Singleton & McNally
206 South Washington Street
Greenville, North Carolina 27834

Dear Mr. Singleton:

This is in reference to the changes affecting voting in the City of Greenville, Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on February 6, 1980.

The submitted changes include: Ordinance No. 104(1970), expanding the Greenville City Council by two seats; the adoption of the non-partisan election and runoff method of election provided under N.C.G.S. §163-293, and the concomitant imposition of a majority vote requirement for municipal elections, pursuant to Resolution Nos. 87(1972), 125(1973), and 200(1975); the creation of a municipal board of elections pursuant to Resolution No. 87(1972); the creation of a municipal office of voter registration pursuant to Resolution No. 87(1972); the adoption of Method A (N.C.G.S. §163-288(c)) pursuant to Resolution No. 87(1972); the adoption of Method D (N.C.G.S. §163-288(c)(4)) pursuant to Resolution No. 125 (1973); the exercise of the option offered under N.C.G.S. §163-285(2) to contract with the Pitt County Board of Elections to conduct municipal elections pursuant to Resolution No. 200(1975); the establishment in 1973 of filing fees for municipal elections pursuant to N.C.G.C. §163-294.2(e); Ordinance No. 667(1977), reducing filing fees for municipal elections; and annexations, Ordinance Nos. 208, 213, 216, 220, 223, 225, 227, 231, 239, 272, 278, 284, 292, 295, 302, 303, 305, 307, 309, 311, 321, 336, 343, 349, 353, 354, 369, 375, 376, 377, 383, 402, 427, 460, 463, 499, 507, 560, 616, 617, 626, 674, 719, 741, 889, 911, and 917.

With respect to Ordinance No. 104, the creation of the municipal board of elections, the creation of a municipal office of voter registration, the adoption of Method D, the designation of the Pitt County Board of Elections as the authority responsible for conducting municipal elections, and the two filing fee changes, the Attorney General does not interpose any objections to the changes in question. 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 changes. Relative to the adoption of Method A, we make no determination since it has now been superceded by the adoption of Method D.

With respect to the adoption of the majority vote run-off requirement, we note that under Section 5, the city has the burden of proving that the submitted change does not represent retrogression in the position of black voters in the City of Greenville and that it does not transgress constitutional limits with respect to black voters. See Beer v. United States, 425 U.S. 130(1976). See also 28 C.F.R. 51.19. Under White v. Regester, 412 U.S. 755(1973), and its progeny, to prove the constitutionality of its system, the city must show that the electoral system is equally open to black and white voters, and that each group has a fair opportunity to elect candidates of its choice.

We have given careful consideration to the information you have provided as well as to comments and information provided by other interested parties. In addition to evidence of a general pattern of racially polarized voting in the City of Greenville, we have noted that since 1965 only one black candidate has achieved election, and then only by placing sixth when he was first elected with a plurality of the vote. On the basis of our review, therefore, the adoption of the majority vote run-off requirement represents a retrogression in the position of black voters with respect to their position under the plurality win system.

Under these circumstances we are unable to conclude, as we must under Section 5, that the adoption of the majority vote requirement does not have a racially discriminatory purpose or effect. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the imposition of the majority vote run-off requirement for municipal elections.

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 neither has 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 majority vote run-off requirement for municipal elections legally unenforceable.

With respect to the submitted annexations, to determine that a change in the composition of a city's population resulting from annexations does not have the effect of abridging the right to vote on account of race or color, the Attorney General must be satisfied that the percentage of members of a racial minority group in the city has not been appreciably reduced, that voting is not racially polarized, or that, nevertheless, the city's electoral system will afford minority groups representation reasonably equivalent to their political strength in the enlarged community. City of Richmond v. United States, 422 U.S. 358, 378 (1979).

To apply this standard to this submission we have carefully examined the information you have provided with respect to this submission, information provided by other interested parties, and population estimates and projections for the annexed areas provided by the Greenville City Planning Office. Based on our analysis of the statistics that you have provided, we have concluded that the submitted annexations have proportionally reduced the black population in the City of Greenville by some two percent. However, our analysis at this time also indicates that, under the plurality requirement currently in effect in Greenville (in the wake of our objection to the majority vote requirement, supra), the city's at-large electoral system may well continue to afford black voters representation reasonably equivalent to their political strength in the enlarged community. We note, however, that future substantial residential annexations could result in a degree of dilution significant enough that black voters would not be afforded such fair access, in the absence of fairly drawn single-member districts.

With these precautions in mind, therefore, the Attorney General does not interpose any objection to the submitted forty-eight annexations. 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 the enforcement of such changes.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the City of Greenville plans to take with respect to the objection to the majority vote requirement. If you have any questions concerning this letter, please feel free to call Andrew Karron (202-724-7403), of our staff, who has been assigned to handle this submission.

Sincerely,

JOHN R. BUERTA
Acting Assistant Attorney General