



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Robert C. Cogswell, Jr., Esq.  
City Attorney  
P. O. Box 1513  
Fayetteville, North Carolina 28302

APR 9 1985

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Dear Mr. Cogswell:

This refers to the twenty-nine annexations (Ordinance Nos. 84-4-267, 84-4-268, 84-5-269, 84-5-270, 84-7-271, 84-7-272, 84-7-273, 84-7-274, 84-7-275, 84-7-276, 84-7-277, 84-7-278, 84-7-279, 84-7-280, 84-7-281, 84-7-282, 84-7-283, 84-7-284, 84-7-285, 84-7-286, 84-7-287, 84-7-288, 84-7-289, 84-7-290, 85-1-291, 85-2-292, 85-2-293, 85-2-294 and 85-3-295) to the City of Fayetteville in Cumberland County, North Carolina, 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 the information to complete your submission on March 18, 1985.

We have considered carefully the information you have provided, data obtained from the 1980 Census, and information provided by other interested parties. At the outset, we note that, even though blacks constitute over 40 percent of the city's population, at no time has more than one black been elected to the city council, which appears to be the result of a general pattern of racially polarized voting occurring in the context of Fayetteville's at-large election system with its majority vote requirement. Our analysis of available data indicates that the proposed annexations will reduce the city's minority population by 2.4 percent, and that the planned development of the areas to be annexed would, over time, most likely result in a substantially larger percentage dilution. In the context of the at-large election system that exists in Fayetteville, we view this prospect as significantly enhancing the ability of the white majority to control the election of all councilmembers.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the annexations here under submission.

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 these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to 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 effect of the objection by the Attorney General is to make the annexations legally unenforceable insofar as voting rights are concerned. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Fayetteville plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Bradford Reynolds", written over a horizontal line.

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division



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MAR 3 1986

Robert C. Cogswell, Jr., Esq.  
City Attorney  
P. O. Box 1513  
Fayetteville, North Carolina 28302

Dear Mr. Cogswell:

This refers to Ordinance No. S1985-17 and Resolution No. R1985-109 which provide for an increase in the size of the city council from six to nine; the change in the method of election to six single-member districts with three at-large positions; the districting plan; and the removal of voting powers from the mayor except in the case of a tie for the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. This also refers to our reconsideration of the April 29, 1985, objection to twenty-nine annexations to the city. We received your initial submission on December 30, 1985; supplemental information was received on January 27, 1986.

The Attorney General does not interpose any objections to the changes contained in Ordinance No. S1985-17 and Resolution No. R1985-109. In addition, because the changes being precleared at this time provide a method of election which affords the minority group "representation reasonably equivalent to their political strength in the enlarged community" (City of Richmond v. United States, 422 U.S. 358, 370 (1975)), the objection interposed on April 29, 1985, to twenty-nine annexations to the city is hereby withdrawn. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.45). 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. See also 28 C.F.R. 51.48.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm. Bradford Reynolds", is written over a horizontal line.

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division

cc: Dr. Brian Sherman  
Direct Research Services