



U.S. Department Justice

Civil Rights Division

Office of the Assistant Attorney General.

Washington, D.C. 20035

Mr. A. Perry Wilbourne  
Clerk/Administrator  
Drawer 400  
Foley, Alabama 36536

AUG 30 1993

Dear Mr. Wilbourne:

This refers to the annexation (Ordinance No. 472-93) to the City of Foley in Baldwin County, Alabama, 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 response to our May 17, 1993, request for additional information on June 29, 1993.

We have considered carefully the information you have provided, as well as Census data, information contained in your submissions of earlier annexations, and information and comments from other interested persons. As you know, on November 6, 1989, the Attorney General interposed a Section 5 objection to the city's proposal to annex three predominantly white residential areas. Our analysis of the information available at that time indicated that the city's annexation policy was not being applied in a nondiscriminatory manner towards predominantly black and predominantly white residential areas whose residents desired annexation to the city. The city offered no legitimate nonracial explanation for its willingness to encourage the petitions for annexation of majority white residential areas while discouraging and rejecting petition efforts by a majority black residential area known as Mills Quarters.

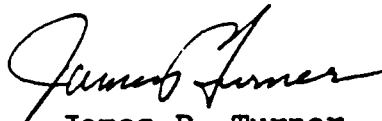
Our analysis of the submitted annexation reveals that it, like the annexations objected to in 1989, reflects a continuation of the city's previously noted practice of annexing areas that can be expected to contain predominantly white population, while discouraging the annexation of areas of predominantly black population. The city has provided no new information since our 1989 objection that suggests that its continued failure to annex majority black areas, such as Mills Quarters or the area of Beulah Heights not already within the city limits, is based on legitimate, nonracial criteria.

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 City of Pleasant Grove v. United States, 479 U.S. 462, 469 (1987); Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (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 Ordinance No. 472-93.

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 annexation has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed annexation continues to be legally unenforceable insofar as it affects voting. See Clark v. Roemer, 111 S. Ct. 2096 (1991); Dotson v. City of Indianola, 514 F. Supp. 397, 403 (N.D. Miss. 1981); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Foley plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,



James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division