

OCT 30 1974

JSP:RAS:hmp  
DJ 166-012-3

Mr. Sidney M. Shepard, Sr.  
Madley City Attorney  
P.O. Drawer 99  
Swainsboro, Georgia 30401

Dear Mr. Shepard:

This is in reference to Act No. 1304 (H.B. No. 1784) of the Georgia General Assembly, amending the Charter of the City of Madley to provide a majority requirement in the City mayoral and councilmanic elections, submitted to the Attorney General pursuant to Section 3 of the Voting Rights Act of 1965. Your submission was completed on September 5, 1974. In accordance with your request, expedited consideration has been given to this submission pursuant to the procedural guidelines for the administration of Section 3 (28 C.F.R. 51.22).

After careful consideration of your original submission and the additional information you have provided, Madley's election history and demographic characteristics, and recent court decisions in voting rights cases, we are unable to conclude that implementation of the majority requirement and the numbering of the City Council posts does not have a racially discriminatory effect.

Our analysis demonstrates that under Madley's current system of at-large plurality elections, minority race voters have the potential to elect a candidate of their choice. In fact, as you know, two minority

candidates have won election to the City Council in recent years. This minority voting strength potential is lost, however, if candidates must restrict their candidacies to a single, specific post, and must receive more than half of the votes cast.

In comparable situations, recent court decisions indicate that numbered posts and a majority requirement may effectively operate as a dilution of minority voting strength. Gray v. Barnes, 343 F. Supp. 704 (M. D. Tex. 1972), *aff'd*, White v. Registrar, 412 U.S. 735 (1973); Georgia v. United States, 411 U.S. 524 (1973); Sims v. Amos, 336 F. Supp. 924 (M.D. Ala. 1972); Dunston v. Scott, 336 F. Supp. 206 (E.D. N.C. 1972). Indeed, courts have found such a dilution even where, as in Wadley, the "minority" comprised a numerical majority of the population. See White v. Registrar, *supra*; Sims v. McKeithen, 485 F. 2d 1297 (5th Cir. 1973). Therefore, we cannot conclude, as we must under the Voting Rights Act, that the implementation of a majority requirement in the Wadley mayoral and city councilmanic elections does not have the purpose or effect of abridging the right to vote on account of race. For that reason I must, on behalf of the Attorney General, interpose an objection to those portions of Act No. 1384 (H.B. No. 1784) of the Georgia General Assembly which amend the Charter of the City of Wadley to provide a majority requirement and designated posts in City mayoral and councilmanic elections.

Of course, as provided by Section 3 of the Voting Rights Act, you have the alternative of instituting action in the United States District Court for the District of Columbia, seeking a declaratory judgment that the present submission does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Additionally, our investigation of this submission has revealed that sometime after the passage of the Voting Rights Act of 1965, the City enacted a \$25 filing fee as a requirement of candidacy for city elective office. Our records fail to show that this change has been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5. If our information is correct, it is necessary that this change either be brought before the District Court for the District of Columbia or submitted to the Attorney General before implementation. Changes in procedure which affect voting including the establishment of filing or qualifying fees, are unenforceable unless and until the Section 5 preclearance requirements have been met. See Perkins v. Matthews, 400 U.S. 379 (1971); Hednett v. Amer., 394 U.S. 358 (1969); Allen v. State Board of Elections, 393 U.S. 344 (1969).

Sincerely,

J. STANLEY FORTINGER  
Assistant Attorney General  
Civil Rights Division