

JUN 3 1977

DJ 166-012-3
X6464-7846 X7848

Mr. J. Willis Conger
Conger & Conger
Attorneys At Law
P. O. Box 368
Bainbridge, Georgia 31717

Dear Mr. Conger:

This is in reference to the annexation made by Ordinance No. 301-A and the changes in the method of electing the Mayor and Board of Aldermen of the City of Bainbridge, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on April 4, 1977.

The Attorney General does not interpose any objection to the 1966 annexation made by Ordinance No. 301-A. 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 change.

Georgia Act no. 146 (1966) reduced the number of members of the Bainbridge Board of Aldermen from eight to four. Georgia Act No. 993 (1968) instituted a majority vote requirement for the election of mayor and members of the Board of Aldermen, instituted a numbered post requirement for election to the Board of Aldermen, and increased the number of members of the Board from four to six.

We have given careful consideration to the information furnished by you as well as to Bureau of the Census data and information and comments from other interested parties. Our analysis reveals that although blacks constitute 41 percent of the population of the City of Bainbridge only one black has been a candidate for alderman during the past 12 years and no black has ever been elected to the Board of Aldermen. In these circumstances recent court decisions indicate that the use of majority and numbered post requirements, in the context of at-large elections, have the potential for

abridging minority voting rights. See White v. Regester, 412 U.S. 755 (1973), and Illmer v. Melchion, 455 F.2d 1297 (5th Cir. 1973), aff'd sub nom. East Carroll School Board v. Marshall, 424 U.S. 436 (1976). In addition, the reduction in the number of members of the Board of Aldermen limits the opportunity of blacks to influence aldermanic elections.

Under these circumstances, I am unable to conclude, as I must under the Voting Rights Act, that the changes embodied in these Acts will not have a racially discriminatory effect on the conduct of election in the City of Bainbridge. I must, therefore, on behalf of the Attorney General, interpose an objection to the implementation of Act No. 146 (1966) and Act No. 390 (1968).

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that these changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Sections 51.21, 51.23, and 51.24 of the Attorney General's Section 5 guidelines (29 C.F.R. 51.21, 51.23, and 51.24) permit reconsideration of the objection should you have new information bearing on the matter. However, until such time as the objection may be withdrawn or a judgment from the District of Columbia Court is obtained, the legal effect of the objection by the Attorney General is to make the changes in question legally unenforceable.

Should the City elect to return to the method of election in effect prior to the enactment of these acts, and if in the course of doing so the City of Bainbridge adopts any practices or procedures beyond those specified in the prior law, preclearance under Section 5 should be obtained. Of course, should a new method of election be adopted that, too, would have to be precleared.

Finally, because the matters discussed in this letter are the subject of litigation pending in the United States District Court for the Middle District of Georgia (Shaw v. City of Bainbridge, C.A. No. 76-17 THOM), we are sending copies of this letter to the court and to counsel for the plaintiffs.

Sincerely,

Draw S. Days III
Assistant Attorney General
Civil Rights Division