



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable J. J. Rayburn
Mayor, City of Wrens
401 Broad Street
Wrens, Georgia 30833

OCT 20 1986

Dear Mayor Rayburn:

This refers to the change to a majority vote requirement and numbered positions for the election of the mayor and council; the polling place change to the Wrens Community Center; the use of voting machines; the procedures for conducting the February 18, 1978, and the February 27, 1982, special elections; and the eight annexations for the City of Wrens in Jefferson County, Georgia, 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 August 21, 1986.

We have considered carefully the information you have submitted, data from the 1980 Census, and information from other interested parties. Based upon our review, the Attorney General does not interpose any objection to the annexations; the procedures for conducting the February 18, 1978, and February 27, 1982, special elections; the polling place change; and the use of voting machines. 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 any of these actions. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to the imposition of a majority vote requirement and the numbered positions for the election of mayor and city commission, however, we are unable to reach a similar conclusion. We note that although there have been several attempts by black candidates to gain a position on the city

council, there has been only one black city commissioner elected since these changes were implemented, and that commissioner has been largely unopposed in his elections. Election returns supplied by the city reveal that although there have been other black candidates running for a seat on the city council, they have been defeated by white opponents. This appears in substantial part to be the result of a general pattern of racially polarized voting occurring in the context of Wrens' at-large election system; a condition which, since 1970, has made it even more difficult for black voters to elect candidates of their choice by requiring that candidates run for numbered positions and receive a majority of the vote to be elected. Under Beer v. United States, 425 U.S. 130 (1976) such a requirement, in the circumstances as they exist in Wrens, would appear to have the proscribed retrogressive effect.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that the submitted changes have 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 view of the considerations discussed above, we cannot conclude that the city's burden has been sustained with regard to the majority vote or the numbered post provisions. Therefore, on behalf of the Attorney General, I must object to the implementation of these requirements.

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, color, or membership in a language minority group. 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 majority vote and numbered posts provisions legally unenforceable. 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 Wrens plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds". The signature is written in a cursive style with a large, prominent initial "W".

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division