U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

May 30, 1989

Ms. Linda W. Beazley
Executive Director
Richmond County Board of Elections
104 City-County Building
Augusta, Georgia 30911

Dear Ms. Beazley:

This refers to Act No. 938, H.B. 1220 (1988), which repeals the city charter of the City of Augusta; Act No. 934, H.B. No. 1637 (1988), which provides for the consolidation of the City of Augusta and Richmond County; a commission-council consisting of ten commissioner-councilmembers; a change in the method of election to nine single-member districts and a chairperson elected at large; the districting plan; an implementation schedule; four-year, staggered terms of office; a majority vote requirement for all commission-council offices; compensation for the commission-council, the method of filling vacancies; and the candidate qualifications for the commissioner-councilmembers; Act No. 43, H.B. 1075 (1989), which amends the form of government and election method under Act No. 934 (1988) to provide for a non-voting chairperson-mayor without veto power elected at large by majority vote and 15 commissioner-councilmembers elected from three single-member superdistricts and six single-member districts on a partisan basis by majority vote and from six single-member districts on a nonpartisan basis by plurality vote; a districting plan; an implementation schedule; and qualifications for the chairperson-mayor and chairperson-mayor pro tempore, with both positions limited to two consecutive terms, for the City of Augusta and Richmond 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 your submission of Act No. 43 and the information to complete your submissions of Act No. 934 and Act No. 938 on March 28, 1989.

We have considered carefully the information and materials you have supplied, along with information available to us from other interested parties, our files, and the Bureau of the Census. At the outset, we note that the body of Section 5 law which pertains to annexations would seem not only applicable to but controlling of the situation involving a consolidation such as the instant one. Since the Court's decision in Perkins v. Matthews, 400 U.S. 379 (1971), it has been clear that annexations are subject to Section 5 because they have the potential for discrimination which inheres in a change in the composition of a voting electorate. The same is true of a consolidation. Thus, we look for guidance here to the Section 5 law on annexations.

The instant consolidation involves the City of Augusta and Richmond County, in which Augusta is located. The city is 53.5% black and, as a result of our recent lawsuit, has adopted a new method of election which affords its black constituency a realistic opportunity to elect candidates of their choice to at least 6 of 13 seats on the new council. The county is 37.4% black and elects its governing body from six single-member districts of which two have controlling black majorities. Thus, under the present arrangement there are two governing bodies involving a total of 19 elective positions of which blacks can realistically control election to 8. Racial bloc voting is a well established phenomenon in the area.

The change now before us would consolidate these two entities into one with a governing body consisting of a 15 member commission-council elected partially from six dual purpose single-member districts and partially from larger super districts. The six single-member districts are basically the same as the existing county commission single-member districts and are used to elect two sets of commission-council members under the consolidated system: first, 6 members would be elected from these districts by partisan majority vote; second, 6 other members would be elected from the same districts by nonpartisan plurality vote. As noted earlier two of these six districts have black majorities. The remaining 3 members of the commission-council would be elected one each from 3 super districts each composed of two of the six single-member districts. One of the three super districts is majority black. Thus, under the consolidation as proposed, blacks would have controlling majorities in 3 of the 9 districts which, in turn, would elect 5 of the 15 commission-council members.

From a straightforward comparative analysis, then, blacks as a whole would appear to be worse off under the proposed consolidated system, where they ostensibly would be able to elect 5 of 15 members (or 33% of the governing body), than they were under the existing system where they are able to control the election of 8 of the composite 19 members (or 42%) of the two existing governing bodies. Thus, retrogression in the traditional sense is readily apparent. However, under Section 5 annexation law it is now well established that such "retrogression" is permissible if

the election method incorporated into the newly created electorate is one which assures the affected minority group "representation reasonably equivalent to their political strength in the enlarged community." See City of Richmond v. United States, 422 U.S. 358, 378 (1975). Therefore, the inquiry turns to whether the election method adopted here is one which does this.

First in that regard, we note that even though facially the plan gives black voters the opportunity to elect 5 of 15 members to the consolidated governing body, our analysis shows that the ostensible 5 black controlled seats could very well translate into as few as 3, depending on whether the white constituency is able to parlay their significant numbers into victories for the two seats in black majority districts where the plurality win feature will control. Second, other alternatives which would have given black voters a more realistic opportunity to elect candidates of their choice to a number of seats reasonably equivalent to their proportion of the enlarged community were not only readily available but, in fact, were presented but apparently rejected. Thus, in our view the proposed consolidation does not meet the Richmond test of fairly recognizing the political potential of the minority group in the enlarged electorate.

However, even assuming the Richmond test to have been met, there remains the question of purpose. In that regard, much of our information suggests that the prospect that the city, which has a black population majority, finally would have an election system that fairly reflected black voting strength was the primary, if not the sole, motivation for the proposed consolidation. Just prior to the 1988 legislative session a biracial committee appointed to study the feasibility of consolidation recommended against uniting the city and county governments at that time. In spite of that recommendation and strong black opposition, a bill to effect consolidation nevertheless was vigorously pursued and eventually adopted. Further, analysis of the results of the November 8, 1988, referenda on the consolidation question serves to corroborate other information we have received which indicates that consolidation is a racial issue, with opinions sharply divided along racial lines reflecting that most white voters favored consolidation and most black voters opposed merger of the two governments.

In support of the consolidation proposal you have provided a statement of the goals to be achieved by consolidation. Yet, the information we have received does not include any study or other documentation to establish the feasibility or need for consolidation, or that consolidation is likely to achieve the stated goals. Furthermore, in the more than a year since the consolidation legislation was first adopted, it appears that the city and county have yet to document any need for consolidation or how a consolidated government can achieve any of the goals put forward for its existence. In that regard, it is interesting to note that a task force only recently was appointed to study the

manner in which consolidation can be administratively accomplished and the effect that the governmental merger will have on the administrative and financial status of the two existing entities.

The original election plan for the consolidated government would have provided black voters with an opportunity to elect three persons of their choice to a ten-member governing board. Because of minority concerns that the plan was not fair to black voters, an amended election plan was adopted under Act No. 43 (1989) to provide for a total of five black-majority districts among the fifteen districts that will elect voting commissioner-council persons.

Proponents of the submitted voting changes contend that black voters will be able to elect candidates of their choice in the five black-majority districts, as well as in a 36 percent black district with election by plurality vote. However, as noted earlier, our analysis suggests that the proposed consolidation could reduce significantly the electoral effectiveness of the majority-black population of the City of Augusta by the manner in which it is merged with the majority-white population of Richmond County, resulting in diminished opportunities for black citizens to elect representatives of their choice to govern their affairs.

We note, too, that all of the activity with respect to the submitted consolidation and election system must be considered in the light of recent findings of racial discrimination associated with the electoral process in Augusta and Richmond County. Lawsuits under Section 2 of the Voting Rights Act were required to achieve racially fair election systems in the city and county, and the Attorney General has interposed Section 5 objections to several proposed voting changes, including the initial date selected for conducting the required referenda on the proposed consolidation here under review.

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. 51.52(c)). In satisfying its burden, the submitting authority must demonstrate that the proposed changes are not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting changes. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Pleasant Grove v. United States, 479 U.S. 462, 469, 471-72 (1987); City of Rome v. United States, 422 U.S. 156, 172 (1980); City of Richmond v. United States, 422 U.S. 358, 378-79 (1975). In light of the circumstances 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

consolidation of the City of Augusta and Richmond County, Georgia, and the attendant repeal of the city charter for the City of Augusta.

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 51.45 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 Act No. 938, H.B. No. 1220 (1988), and the provisions of Act No. 934, H.B. No. 1637 (1988), which provide for consolidation of the city and county, legally unenforceable. 28 C.F.R. 51.10.

In connection with this determination one other matter also deserves mention. In City of Richmond v. United States, supra, as well as in City of Port Arthur v. United States, 459 U.S. 159 (1982), the Court made it clear that, even where an expansion of boundaries was undertaken for the proscribed purpose, such purpose could be purged through a showing that presently verifiable legitimate reasons exist for the annexation. However, in Richmond and in Port Arthur there were court findings that valid reasons existed for the annexation and in Port Arthur the Supreme Court affirmed the district court's modification of the districting plan there in question on the ground that that that action was "a reasonable hedge against the possibility that the . . . scheme contained a purposefully discriminatory element." Supra, 459 U.S. at 168. Here, there have been no similar court findings addressing the nonracial justification of this consolidation. Indeed, our information is that there have been considerations given in the past to what might be legitimate expansion of the City's boundaries through annexation but, as earlier explained to us in another context, that contemplated action does not support consolidation of the entire county-city nor has there been any other showing of a need for such a change. This is especially the case since the last study commission was negative, the present one has just started and the plan excludes predominantly white municipalities in the county. While it may be possible in the future to make a showing of present need as was done in Richmond, the fact that the proposal is not just to match city boundaries to urban growth (as in Richmond and Port Arthur), but to consolidate urban and rural areas in an historical context that suggests race has been a constant consideration will not make that an easy task.

With regard to the provisions of Act No. 934 (1988) that provide for the ten-member election system, we note that those provisions have been superseded in their entirety by provisions of Act No. 43 (1989) and thus, were effectively withdrawn from Section 5 review. Accordingly, the Attorney General will make no determination regarding the superseded provisions. See 28 C.F.R. 51.35.

With regard to the remaining provisions of Act No. 934 (1988) and the provisions of Act No. 43 (1989) adopting an election method for the consolidated government, those provisions are dependent on the consolidation of the city and county governments. In view of the objection to that consolidation being interposed herein, the Attorney General will make no determination at this time with regard to those matters. See 28 C.F.R. 51.35. However, we feel a responsibility to point out that the proposed election system does not appear to fairly recognize the political potential of the minority group in the proposed entity of Augusta-Richmond County, see City of Port Arthur v. United States, 459 U.S. 159, 166-68 (1982); City of Richmond v. United States, 422 U.S. at 378, nor has any legitimate nonracial reason been advanced to justify the unique features of the proposed election system or the mixture of partisan, majority-win and nonpartisan, plurality-win seats from the same geographical districts.

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 Augusta and Richmond County plan to take with respect to these matters. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8290), Section 5 Attorney-Reviewer.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division