



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

JUL 15 1991

James W. Smith, Esq.  
P. O. Box 469  
Hinesville, Georgia 31313

Dear Mr. Smith:

This refers to Act No. 825 (1990), which provides for the adoption of a majority vote requirement for mayor; a change in the method of electing the city council from at large by plurality vote to single-member districts by majority vote; the districting plan; a candidate residency requirement; and an implementation schedule for the change to single-member districts for the City of Hinesville in Liberty 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 last transmittal of information concerning your submission on May 15, 1991.

Except for the adoption of the majority vote requirement for mayor, the Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to electing the mayor by majority vote, we are unable to reach the same conclusion. As you are aware, on October 1, 1971, the Attorney General interposed a Section 5 objection to the adoption of a majority vote requirement for mayor and a majority vote requirement and numbered positions for the city council. United States v. Cohan, 358 F. Supp. 1217 (S.D. Ga. 1973). Thereafter, on three occasions the city requested reconsideration and the Attorney General declined to withdraw the objection. As explained in our most recent determination in this regard, on August 23, 1983, the changes did not pass muster under Section 5 because they would occasion an impermissible retrogression in minority voting strength in the context of at-large elections and racially polarized voting.

Our review of the city's election history since 1983 does not suggest that our past analyses were incorrect. Indeed, the apparent basis for the city's change to single-member districts is a concern that municipal elections are characterized by polarized voting. We also note that the black population percentage in the city has increased significantly in the last decade, which serves to heighten the retrogressive effect of the proposed majority vote requirement in the context of city-wide elections. Thus, while the change to single-member districts for councilmanic elections, in one of which blacks constitute a majority of the registered voters, renders the majority vote provision for those elections nonproblematic, the majority vote requirement for mayor continues to have an impermissible effect under the Voting Rights Act. Beer v. United States, 425 U.S. 130 (1976).

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 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 the adoption of a majority vote requirement for the election of the mayor.

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 change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may 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 majority vote requirement for mayor continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Hinesville plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

  
John R. Dunne  
Assistant Attorney General  
Civil Rights Division