JPT:RBJ:TCH:lrj
DJ 166-012-3
88-3378
92-3058

JUN 25 1993

Alex Davis, Esq.
City Attorney
P.O. Box 697
Butler, Georgia 31006

Dear Mr. Davis:

This refers to the change from plurality vote to majority vote and a runoff requirement for the election of mayor, adopted by Act No. 1477 (1972), Act No. 986 (1988), and the Consent Agreement and Order in Chatman v. Spillers, No. CV 86-91-COL (M.D. Ga.) (order of June 1, 1992), for the City of Butler in Taylor 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 city's submission of Act No. 1477 (1972) and Act No. 986 (1988) on June 3, 1988; we received the city's submission of the changes effected by the consent decree in Chatman v. Spillers on June 26, 1992.

The City of Butler did not submit the 1972 adoption of the majority vote requirement until 1988. The submission, however, did not contain sufficient information to enable us to determine that the majority vote requirement has neither a discriminatory purpose nor a discriminatory effect. Accordingly, we made a timely request for additional information on August 2, 1988. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.37). Because the city did not respond to this request, we again requested this information on April 28, 1989.

The city's partial response to our request, received on October 17, 1989, over a year after our original request, failed to provide the information specifically requested in our letter. We identified the missing information, including complete election returns, in our December 12, 1989, letter. The city did not respond to this letter.

On August 25, 1992, the Attorney General precleared several changes occasioned by the Chatman consent decree, including a change to multimember districts for the election of the city council and a districting plan. We did not preclear the majority vote requirement for the election of mayor, however, because the city had not provided information sufficient for us to determine that the change satisfied the requirements of Section 5. Our August 25, 1992, letter again requested that the city provide the information that was first requested in 1988. The city has not responded to this request, and you advised us recently that the city would not provide any additional information in support of the majority vote requirement. Accordingly, we will make the Section 5 determination concerning the submitted majority vote requirement for the election of mayor based upon the information currently available to us.

We have examined carefully the information that you have provided, as well as Census data, other information available to us and comments from interested persons. According to the 1990 Census, black persons comprise 46 percent of Butler's population, and 39 percent of the city's voting age population. Prior to 1972, the mayor and the councilmembers were elected at large by a plurality of the votes cast pursuant to a specific plurality vote provision of the 1919 city charter. The city's 1972 charter provided for a majority vote and runoff requirement for mayor and councilmembers, changes which were implemented without the requisite Section 5 preclearance, until the implementation was enjoined by a federal court.

Our review of the election results that have been supplied by the city, and of information that we have obtained from other sources, indicates that there is a pattern of racially polarized voting in elections in Butler that has hampered the ability of black voters to elect candidates of their choice. In this context, the imposition of a majority vote requirement for mayor may further limit the opportunity of black voters to elect candidates of their choice by increasing the probability of "head-to-head" contests between candidates supported by black voters and candidates supported by white voters. See, e.g., Rogers v. Lodge, 458 U.S. 613, 627 (1982); City of Port Arthur v. United States, 459 U.S. 156 (1982).

We have considered the city's contention that the majority vote requirement for mayor should be precleared because we precleared the majority vote requirement for the city's council positions elected from multimember districts. The effect on minority voters of a majority vote requirement in district

elections differs from its effect in at-large elections. In the context of the multimember council districts in the city's 1992 plan, where black persons comprise a substantial majority in one district, a majority vote requirement would appear not to disadvantage black voters. Conversely, in the context of citywide at-large elections, where black persons comprise less than a majority of the population, the change from a plurality vote requirement to a majority vote requirement would appear to make it more difficult for black voters to elect their mayoral candidate of choice. Accordingly, the city has not demonstrated that the adoption of a majority vote requirement for mayoral elections will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (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. 51.40 and 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the majority vote requirement and runoff provision for mayor contained in Act No. 1477 (1972), Act No. 986 (1988) and the consent order in Chatman v. Spillers.

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 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, 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 and runoff provision for mayor continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Finally, we note that the instant determination on the majority vote and runoff requirement for mayor disposes of all pending Section 5 submissions from the City of Butler regarding the 1972 charter, the 1988 charter, and the 1992 consent order in Chatman v. Spillers. Thus, under Section 5, the city may implement the multimember district method of electing city councilmembers and districting plan that were precleared in August 1992, with the mayor elected at large pursuant to the plurality vote requirement of the 1919 city charter. If special elections are scheduled by the City of Butler, the procedures for such special elections will be subject to Section 5 review.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Butler plans to take concerning these matters. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section. Because these matters are pending before the court in Chatman v. Spillers, No. CV 86-91-COL (M.D. Ga.), we are providing a copy of this letter to the court and counsel of record.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable J. Robert Elliot
United States District Court

Laughlin McDonald, Esq.
Southern Regional ACLU Office

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

SEP 24 1993

Alex Davis, Esq.
City Attorney
P. O. Box 697
Butler, Georgia 31006

Dear Mr. Davis:

This refers to your letter of July 14, 1993, which we have considered as a request that the Attorney General reconsider the June 25, 1993, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the change from plurality vote to majority vote and a runoff requirement for the election of mayor for the City of Butler in Taylor County, Georgia, adopted by Act No. 1477 (1972), Act No. 986 (1988), and the Consent Agreement and Order in Chatman v. Spillers, No. CV 86-91-COL (M.D. Ga.)(order of June 1, 1992). We received your letter on July 26, 1993.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, along with the other information in our files and comments received from other interested parties. Our analysis of your initial submission showed that according to the 1990 Census, black residents constituted 46 percent of the total population and 39 percent of the total voting age population in Butler, that elections in Butler and Taylor County had been characterized by racially polarized voting, and that black voters had been unable to elect their preferred candidates under the city's at-large election system.

Our objection letter noted that, under these circumstances, the change from a plurality vote to a majority vote requirement for mayoral elections would appear to make it more difficult for black voters to elect their candidates of choice. Accordingly, we could not conclude that the city had sustained its burden in demonstrating that the proposed change would not lead to "a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

Your request for reconsideration assumes that the primary basis of our decision to object was the city's failure to provide sufficient information to complete its submission. However, the focus of our concern was the city's failure to demonstrate that the proposed changes would not have a retrogressive effect upon the electoral opportunities of black voters. As our objection letter stated, because the city failed to complete its submission in a timely manner we obtained much of the requested information from other sources in order to make our Section 5 determination. While a Section 5 objection indeed may be based upon a jurisdiction's failure to provide the information necessary to complete a submission, that was not the case here, since our initial determination was made after a thorough examination of the merits of your submission.

In support of its request for reconsideration, the city argues that the information considered by the Attorney General in reaching the conclusion that Butler elections are marked by racially polarized voting is erroneous. Specifically, you point to several elections in which black candidates received a majority of the votes in Taylor County. We have analyzed the enumerated elections along with numerous other contests in Taylor County in which black candidates participated. Our analysis shows that these election results, including the three municipal elections that you have provided, confirm the existence of racially polarized voting in Butler. Accordingly, the submitted information does not rebut our conclusions regarding the existence of polarized voting in Butler and does not form a basis for withdrawal of our objection.

In light of these considerations, I remain unable to conclude that the City of Butler has carried its burden of showing that the submitted changes have 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). Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the majority vote and runoff requirement for the election of mayor for the City of Butler in Taylor County, Georgia, adopted by Act No. 1477 (1972), Act No. 986 (1988), and the Consent Agreement and Order in Chatman v. Spillers, No. CV 86-91-COL (M.D. Ga.)(order of June 1, 1992).

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. We remind you that until such

a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed changes are legally unenforceable. See also 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Butler plans to take concerning these matters. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section. Because these matters are pending before the court in Chatman v. Spillers, No. CV 86-91-COL (M.D. Ga.), we are providing a copy of this letter to the court and counsel of record.

Sincerely,

James P. Turner
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