



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 23, 1994

Gary A. Glover, Esq.  
Glover & Blount  
511 Courthouse Lane  
Augusta, Georgia 30901

Dear Mr. Glover:

This refers to the 1977 change in the method of election for city councilmembers from at large to three double-member districts; the districting plan; the implementation schedule; and election administration procedures, including establishment of a satellite voter registration location and the hours therefor; a purge of nonresident voters; the adoption of a majority vote requirement for councilmembers and the at-large elected mayor; and the designation of annexed areas to districts for the City of Waynesboro in Burke 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 responses to our February 13, 1989, request for additional information on February 7, March 2 and 24, 1994.

Except for the adoption of the majority vote requirement, 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).

Regarding the change from plurality to majority vote for both mayor and council, on January 7, 1972, we interposed a Section 5 objection to the city's use of a majority vote requirement for mayor and city council, each of which was then elected at large. Notwithstanding our objection, it appears that the city continued to use a majority vote requirement for both the council and the mayoral seats until 1976 when it abandoned the voting change.

Information made available to us indicates that the city reimposed the majority vote requirement in 1977. The city did not submit the change until 1988. The submission at that time was incomplete, however, and we made a timely request for additional information on February 13, 1989. The city's response to our request, received almost five years after our 1989 letter, provided enough essential information for us to make a final determination on all submitted changes, including the re-adoption of a majority vote requirement for mayor.

It is against this backdrop that we have reviewed the change now before us. We have examined carefully the information that you have provided, as well as Census data and comments from other interested parties. According to the 1990 Census, black persons comprise 58 percent of Waynesboro's total population, 52 percent of the city's voting age population and about 51 percent of all registered voters. Our review of elections involving city voters indicates a pattern of racially polarized voting in Waynesboro that has hampered the ability of black voters to elect their candidates of choice to at-large elected offices. Moreover, it appears that political participation among black voters is depressed, attributable largely to a history of racial discrimination such as that found in the City of Waynesboro, which continues to be reflected in the disparate socio-economic conditions between the city's black and white residents.

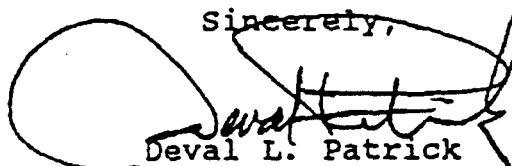
We recognize that a majority vote requirement in councilmanic elections from double-member districts, two of which currently have black population majorities, does not raise the same concerns as its use in an at-large system. By contrast, in the context of city-wide elections, where black voters are a bare majority of the city's registrants, it would appear that the adoption of a majority vote requirement for mayor will make it more difficult for black voters to elect their mayoral candidate of choice by increasing the probability of "head-to-head" contests between black and white candidates. See, e.g., Rogers v. Lodge, 458 U.S. 613, 627 (1982); City of Port Arthur v. United States, 459 U.S. 156 (1982). Under these circumstances, we cannot say that the city has demonstrated that the adoption of a majority vote requirement for the at-large elected mayor 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. 51.52). 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 use of a majority vote requirement insofar as it applies to mayoral elections.

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 use of a majority vote requirement 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, use of a majority vote requirement continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (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 Waynesboro plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,



Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division