U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 11, 1994

James R. Lewis, Esq.
Lewis, Taylor & Lee
P. O. Box 1027
LaGrange, Georgia 30241

Dear Mr. Lewis:

This refers to Act No. 652 (1994), which provides for an increase in the number of city councilmembers from six to seven, a change in the method of electing the city council from at large to four single-member districts, two "super" districts, and one at-large position, a districting plan, a district and city-wide durational residency requirement and an implementation schedule for the City of LaGrange in Troup 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 response to our request for additional information on August 11, 1994.

We have carefully considered the information that you have provided, as well as Census data, information from our December 13, 1993, objection to the earlier proposed change in method of election and our April 1, 1994, continuation of that objection, and information and comments from other interested parties. At the outset, we note that the city has made significant improvements to the objected-to plan by changing the at-large seats to "super district" seats and in so doing, took action that would have addressed fully our concerns with the earlier plan.

The city has gone further, however, and has added an at-large position to the governing body in an apparent effort to limit black representation. Based on the city's actions and decisions during the process to adopt a plan to overcome our objection, it seems that the proposed plan was selected more to maintain the existing white control over the council than to provide black voters with an equal opportunity to enjoy their voting potential.

During the process, representatives of the black community clearly expressed their opposition to any plan containing an at-large council seat other than the mayor's. They also pointed out that the mayor acts as a member of the council and should be included in calculating the share of council that black voters should have the potential for electing. To this end, the black community offered a six single-member district alternative as well as a compromise proposal whereby the plan now before us might have been adopted without the new at-large position. Instead, the city rejected both of these alternatives and chose to discount the mayor as a councilmember, add another councilmember, and elect that member under the at-large method which was the focus of our December 13th objection. Indeed, the city concedes that white voters are likely to elect a candidate of their choice to the at-large seat. Thus, the at-large seat appears to have been added in significant part to minimize minority influence in the city government. See Johnson v. DeGrandy, slip op. 92-519, 92-593 and 92-767, City of Lockhart v. United States, 460 U.S. 125 (1983), Dillard v. Crenshaw County, 831 F.2d 246 (11th Cir. 1987).

In addition, it is apparent that the protection of the interests of incumbents played a significant role in the city's selection of the proposed method of election. While incumbency is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See, e.g., Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S.Ct. 681 (1991); Ketchem v. Byrne, 740 F.2d 1398, 1408-9 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Where, as here, the protection afforded incumbents is provided at the expense of minority voters, the city bears a heavy burden of demonstrating that its choices are based on neutral, nonracial considerations that are not tainted, even in part, by an invidious racial purpose.

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). The existence of some legitimate, nondiscriminatory reasons for the voting change does not satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). 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 proposed change in the method of election for the city council, insofar as it includes the added at-large council position.

We note 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 change in the method of election continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

The Attorney General will make no determination at this time with regard to the districting plan, the district and city-wide durational residency requirement and the implementation schedule as they are directly related to the proposed change in the method of election for the city council, insofar as it includes the added at-large council position. See 28 C.F.R. 51.22 (b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the City of LaGrange plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section. Refer to File No. 94-2267 in any response to this letter so that your correspondence will be channeled properly.

Since the Section 5 status of the method of election has been placed at issue in Willie Cofield v. The City of LaGrange, Georgia, C.A. No. 3-93-CV-JTC (N.D. Ga. 1993), we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: The Honorable Jack T. Camp
The Honorable Julie E. Carnes
United States District Court

The Honorable J. L. Edmondson
United States Court of Appeals

Counsel of Record