



U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 1, 2001

Tommy Coleman, Esq.
Hodges, Erwin, Hedrick & Coleman
P.O. Box 2320
Albany, Georgia 31702-2320

Dear Mr. Coleman:

This refers to Act No. 384 (1966), which adopts numbered posts for city councilmembers; Act No. 522 (1973), which adopts a majority-vote requirement for the election of city officers; and six annexations (Act No. 1019 (1970), and Ord. Nos. 001, 002 (1981), 01 (1989), 03 (1994), and 01 (2000)) to the City of Ashburn in Turner County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our December 19, 1995, request for additional information on August 1, 2001.

The Attorney General does not interpose any objection to the six annexations. 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 numbered posts and majority-vote requirement, adopted in 1966 and 1973, respectively, we have carefully considered the information you have provided, as well as information in our files, Census data, and information and comments from other interested persons. According to the 2000 Census, black persons represent 64.7 percent of the city's total population and 58.7 percent of its voting age population; the city's records indicate that as of October 1, 2000, the city had 2,784 registered voters, of whom 1,418 (50.9%) were black.

Prior to 1966, the city council consisted of a mayor and five members, elected at large by plurality vote to two-year, staggered terms. Under that system, the city held multi-seat contests with all candidates running together. Candidates were ranked by the number of votes received and the number of successful candidates was determined by the number of seats being contested. For example, if there were three seats open, then the candidates with the three highest vote totals were elected.

This electoral system, which as a result of the city's failure to obtain Section 5 preclearance of the changes at issue, is the last legally enforceable method of election. Accordingly, it is the benchmark against which the Attorney General determines whether the city has met its burden of establishing that the proposed changes do not have a discriminatory effect and do not have a discriminatory purpose. See Rome v. United States, 446 U.S. 156, 183-85 (1980); 28 C.F.R. § 51.54(b).

Numbered posts frustrate single-shot voting, also known as "bullet voting," a method used by black voters to circumvent the refusal of white voters to support candidates that the minority community supports. Numbered posts create separate city-wide elections for each seat with only the top vote-getter being elected. The results of the 1986 election for Post 4 in Ashburn illustrate the effect of numbered posts. In that election, there were four candidates, and the third place finisher, a black candidate, was supported by the minority community. If we look at this election, not as one just for Post 4, but rather as one for all three positions, the black candidate, by finishing in third place, would have been elected. However, because the election was only for a single position with only the top vote-getter being elected, he was defeated.

A majority-vote requirement also creates head-to-head contests between minority and white candidates. If white voters split their votes among several candidates, the minority community's candidate may receive the highest number of votes in the election, but fall short of a majority. The imposition of a majority-vote requirement results in a head-to-head runoff in which the white vote will control the outcome of the election. In the 1999 election, both John Burgess and Mary Office were supported by the minority community and received the highest number of votes in the primary election. However, each was defeated in the runoff in head-to-head contests with white candidates.

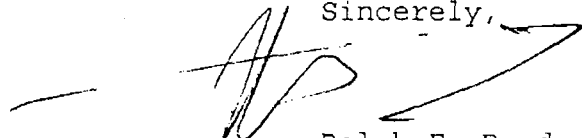
A change affecting voting is considered to have a discriminatory effect under Section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively. Beer v. United States, 425 U.S. 130, 140-42 (1976); see also, 28 C.F.R. § 51.54(a); The burden is on the jurisdiction to show the change is not retrogressive. Reno v. Bossier Parish School Board, 120 S. Ct. 866, 871-72 (2000); see 28 C.F.R. § 51.52(a).

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. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. § 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the adoption of numbered posts and the majority-vote requirement.

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 neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the adoption of numbered posts and the majority-vote requirement continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Ashburn plans to take concerning this matter. If you have any questions, you should call David Harris (202-305-2319), an attorney in the Voting Section.

Sincerely,



Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division