



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 1, 1993

Jonathan R. Hendrix, Esq.
Hendrix & Steigner
P.O. Box 1263
Lexington, South Carolina 29072

Dear Mr. Hendrix:

This refers to the adoption of a majority vote requirement for the election of the mayor and council for the consolidated Town of Batesburg-Leesville in Lexington and Saluda Counties, South Carolina, 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 further responses to our request for additional information on April 2, 5, 9, 15 and 27, 1993.

We have carefully considered the information you have provided, as well as 1990 Census data and information and comments from other interested parties. According to the 1990 Census, black persons would constitute 45 percent of the Town of Batesburg-Leesville's total population and 40 percent of its voting age population. Based upon 1992 data, 29 percent of the town's registered voters would be black persons.

On December 15, 1992, the Attorney General precleared the consolidation of the Towns of Batesburg and Leesville, including, inter alia, a council elected from eight single-member districts with the mayor elected at large, and the districting plan for the single-member districts. Because the information provided at that time was insufficient to enable us to reach a determination regarding the adoption of a majority vote requirement for the election of the mayor and town council, we requested additional information.

Prior to the consolidation, both the Towns of Batesburg and Leesville elected their mayors and councilmembers at large with a plurality vote requirement. Our analysis reveals an apparent pattern of racially polarized voting in town elections for both Batesburg and Leesville that has hampered the ability of black voters to elect candidates of choice and has deterred potential candidates of choice of the black community from competing for at-large offices. Indeed, single-member districts were adopted for the election of councilmembers for the consolidated town as a way to address the concern that municipal elections in the respective towns had been racially polarized.

With regard to the majority vote requirement, we note that on February 24, 1986, the Attorney General interposed a Section 5 objection to the majority vote requirement for the mayor and council for the Town of Batesburg. In our objection letter we stated that in the context of an at-large electoral scheme, the proposed change might, "dilute minority voting strength and exacerbate the election difficulties currently faced by black candidates." Thus, the change now before us would impose in the consolidated town the same electoral feature, *i.e.*, a majority vote requirement, to which we interposed an objection in 1986 in Batesburg.

We recognize that a majority vote requirement in councilmanic elections in the single-member districts, four of which have black voting age population majorities, does not raise the same concerns as its use in an at-large system. But the mayor of the consolidated town will be elected at large. It is well recognized that where a jurisdiction has a significant minority population and a pattern of racially polarized voting exists, the adoption of a majority vote requirement in an at-large election system may further limit the opportunity of minority voters to elect candidates of choice by increasing the probability of "head-to-head" contests between minority 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).

We understand that at a public hearing in 1992, elected officials were advised by their demographer and a black leader that a majority vote requirement in an at-large mayoral election would make the election of a minority supported candidate for mayor less likely. It appears that the decision to adopt an electoral system that includes a majority vote requirement for the election of mayor was made despite these concerns.

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 Town's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 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 Town of Batesburg-Leesville 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,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division