

DJ 166-012-3
A6405

DEC 29 1978

Mr. Frank H. Hawthorne
Batch, Bingham, Baker
Hawthorne, Williams & Ward
First Alabama Bank Building
Post Office Box 751
Montgomery, Alabama 36102

Dear Mr. Hawthorne:

This is in reference to the incorporation of the Town of Hayneville, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on November 3, 1978.

In our review of changes in electoral systems we are guided by relevant judicial decisions. See Beer v. United States, 425 U.S. 130 (1976); City of Richmond v. United States, 422 U.S. 358 (1975); Gomillion v. Lightfoot, 364 U.S. 339 (1960). Under Section 5 the submitting jurisdiction has the burden of proving both that the change in question was not adopted with a discriminatory purpose and that its effect will not be discriminatory. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.19; Georgia v. United States, 411 U.S. 526, 538 (1973); City of Richmond, supra at 380-81 (Brennan, J., dissenting).

In our review of the Hayneville incorporation we have carefully considered the information you have provided as well as information provided by other interested persons. The relevant information before us can be briefly summarized as follows: According to the 1970 census, blacks constitute 77 percent of the population of Lowndes County, in which Hayneville is located. Prior to the passage of the Voting Rights Act in August 1965 few blacks in Lowndes County were registered to vote, but at the time of the incorporation, in 1967 and 1968, black political strength in the county was growing. Immediately prior to the incorporation, a substantial majority of the residents of the unincorporated community

known as Hayneville were black. Section 11-41-1 of the Alabama Code (1975) specifies the requirements and procedures by which "the inhabitants of an unincorporated community which has a population of not less than 75, constituting a body of citizens whose residences are contiguous to and all of which form a homogeneous settlement or community" may form a municipal corporation. The incorporated Town of Hayneville, however, includes only a portion of the contiguous, homogeneous community that existed. Not included within the boundaries of the Town were the residences of a substantial number of blacks, with the result that whites instead of blacks constitute a majority of the Town's electorate. We have been informed, moreover, that the boundaries of the Town were purposefully drawn to assure political control by whites of the Town.

Section 11-41-1 also provides that a quarter quarter section (or a portion thereof) can only be included in an incorporation if four qualified electors and the owners of 60 percent of the land sign a petition in support of inclusion. The information before us indicates that this requirement could have been met with respect to much of the land that was excluded from the Town.

Thus it appears that the purpose of the incorporation was to reduce the influence over Hayneville of the majority black Lowndes County electorate and to prevent the possibility of control of the Town of Hayneville by blacks residing within the Town. From the information before us it appears that this has been the effect of the incorporation. Under these circumstances, I am unable to conclude, as I must under the Voting Rights Act, that the incorporation of the Town of Hayneville has neither a discriminatory purpose nor a discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection pursuant to Section 5 to the incorporation.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the incorporation of the Town of Hayneville did not have the purpose and has not had the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request reconsideration of this objection by the Attorney General. However, until the judgment from the District Court is obtained or the objection withdrawn, the effect of the objection by the Attorney General is to make the incorporation legally unenforceable.

We note in this connection, that an expansion of the boundaries of the Town of Hayneville to include the entire contiguous, homogeneous community could provide the basis for the withdrawal of the objection by the Attorney General.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Town of Hayneville plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Voting Section Attorney David Hunter at 202-633-3849.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc: Congressman Bill Nichols
James Opp Smith, Esquire