

NOV 26 1976

Mr. C. Stephen Malone  
Attorney at Law  
334 E. Elm Street  
Rockmart, Georgia 30153

Dear Mr. Malone:

This is in reference to the 1965 City Charter and the 1976 amendments to the charter for the City of Rockmart, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on September 30, 1976.

We have given careful consideration to the changes involved and the supporting materials, as well as information and comments from other interested parties. With the exception noted below, the Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

However, in regard to Article V, Section 5.02 of the 1965 City Charter, which provides for at-large election with a ward residency requirement for city councilmen, on the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that the change to at-large elections with ward residency requirement, in the context of the pre-existing staggered terms and majority vote requirement, will not have a racially discriminatory effect. Recent Supreme Court decisions, to which we feel obligated to give great weight, indicate that the combination of features such as these may have the effect of abridging minority voting rights in the City of Rockmart. See White v. Regester, 412 U.S. 755 (1973), Waltcomb v. Chavis, 403 U.S. 124 (1971).

cc: Records

Carone

Conigan

Conroy, Weinberg, Hancock, Hamner

USA, Atlanta, Ga.

Pertinent to our evaluation has been certain apparent conflicts in the supporting data that we have received. For instance, in your September 30, 1976, letter you state that "according to the personal knowledge of the City Manager of Rockmart, there are approximately 650 black persons in the City of Rockmart," and this is consistent with the 1970 Census which shows a black population of 661 for the City. However, ward statistics provided us by the City Manager show a total of only 438 blacks in the City of Rockmart. Those estimates also reflect that a large majority of the City's black population resides in one ward (Ward 1). Even though blacks are not in the majority in that ward as presently constituted, in view of the fact that there is an unaccounted for 200 person difference between the citywide estimate and the ward estimates of the black population, we are unable to say that under a fairly drawn single-member ward plan blacks would not have a more realistic opportunity for electing a candidate of their choice.

The Attorney General's Procedures for the Administration of Section 5 of the Voting Rights Act provide that:

If the evidence as to the . . . effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the above-described burden of proof applicable in the District Court, enter an objection and so notify the submitting authority.

(28 C.F.R. 51.19). Accordingly, under the circumstances involved, I must, on behalf of the Attorney General, interpose an objection to the imposition of the at-large system with residency requirements. Of course, should

the City be able to provide new information showing that the at-large method does not adversely affect the potential of black voters in Rockmart to elect a candidate of their choice, we will be willing to reconsider the objection.

Sincerely,

J. Stanley Pottinger  
Assistant Attorney General  
Civil Rights Division

DJ 166-012-3  
X7995

APR 1977

Mr. C. Stephen Malone  
Attorney at Law  
334 N. Elm Street  
Post Office Box 800  
Rockmart, Georgia 30153

Dear Mr. Malone:

This is in reference to your request that the Attorney General reconsider his November 26, 1976 objection under Section 5 of the Voting Rights Act of 1965, as amended, to Article V, Section 5.02 of the 1968 Rockmart City Charter, which provides for at-large election with a ward residency requirement for city councilmen. Your request for reconsideration was received on February 3, 1977.

We have given careful consideration to the information which you have recently forwarded as well as information and comments from interested parties. In addition, we have utilized the information and data which you have previously provided this office in connection with our original examination of the change in question.

Our analysis reveals that blacks in the City of Rockmart are concentrated in one ward (Ward 1). Although estimates as to the number of black citizens in the City of Rockmart are still conflicting, it is our opinion that under a fairly drawn single member ward plan, blacks would have a more realistic opportunity for electing a candidate of their choice. Under the existing system, with at-large elections, ward residency requirements, staggered terms and a majority vote requirement, the opportunity for minority political representation is negligible. As a result, we are unable to conclude that the change in question does not have an impermissible dilutive impact on the voting potential of racial minorities in the City of Rockmart.

In reaching this decision, we have taken into consideration the nature of the change, i.e., from single member wards to at-large election with a ward residency requirement, and the factors considered by the Supreme Court in United States v. Beer, 425 U.S. 130 (1976). The Court stated that (at 141):

" . . . the purpose of Section 5 has always been to insure that no voting procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."

It is our view that the change in question would represent such a retrogression. Under these circumstances, we do not perceive a basis for the withdrawal of the Attorney General's objection.

Of course, as provided by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia seeking a declaratory judgment that the at-large election system with a ward residency requirement does not have the purpose and will not have the effect of denying or abridging the right to vote of blacks in the City of Rockmart. Unless and until such a judgment is obtained, however, as previously noted the legal effect of the objection by the Attorney General is to render the change in question legally unenforceable.

Sincerely,

Drew S. Days III  
Assistant Attorney General  
Civil Rights Division