

MAR 2 1981

Samuel S. Maguire, Esq.
City Attorney
440 Telfair Street
Augusta, Georgia 30901

Dear Mr. Maguire:

This is in reference to the changes affecting voting in the City of Augusta, Richmond 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. Your submission was completed on December 30, 1980. Although we noted your request for expedited consideration, we have been unable to respond until this time.

The submitted changes are: Act No. 1167 (H.S. No. 1531 (1980)) providing for a majority vote requirement; election date change pursuant to Act No. 290 (H.S. No. 798 (1979)); third term for the Mayor pursuant to Act No. 444 (H.B. No. 839 (1977)); third term for members of the city council and one-year residency requirement pursuant to Act No. 1309 (H.B. No. 1993 (1976)); unlimited terms for councilmembers pursuant to Act No. 1328 (H.B. No. 2005 (1974)); election date change pursuant to Act No. 1049 (H.B. No. 1520 (1972)); election date change pursuant to Act No. 389 (H.B. No. 261 (1969)); municipal election contest determined by the Superior Court pursuant to Act No. 98 (H.S. No. 403 (1965)); annexations by Ordinance Nos. 4281, 4484, 4876, 4902, 4915, 4922, 4935 and the use of vote recorders pursuant to Act No. 313 (H.S. No. 454 (1967)).

With regard to the three election date changes, determinations of municipal election contests by the Superior Court, the seven annexations, the use of vote recorders, and the decrease to three in the number of terms which may be served by the mayor and councilmembers, 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.

Inasmuch as the provision relating to unlimited terms for councilmembers which is set forth in Act No. 1323 (H.B. No. 2005 (1974)) has been superseded by Act No. 444 (H.B. No. 339 (1977)), it is not necessary for us to reach the more difficult question whether the adoption of unlimited terms would constitute a violation of Section 5. See Part 51.23 of the Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as amended.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that changes affecting voting were not adopted with a discriminatory purpose and that their implementation will not have a discriminatory effect. See Beer v. United States, 425 U.S. 130 (1976), Gilkes County v. United States, 450 F. Supp. 1171 (D. D.C. 1978), affirmed, 47 U.S.L.W. 1291 (U.S. Dec. 4, 1978), and Georgia v. United States, 411 U.S. 526 (1973). See also Part 51.35(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). With regard to the majority vote requirement we are unable to conclude, that this change has neither a discriminatory purpose or effect.

We have given careful consideration to the information you have provided us as well as to comments and information provided by other interested parties. An analysis of ward returns demonstrates that voting in the City of Augusta generally follows a pattern of racially polarized voting. Although blacks constitute 49.85 percent of the population of the city (according to the 1970 Census), only four of the sixteen councilmembers are black. Our analysis also revealed that even some of these black candidates who have been successful won only because of the plurality requirement. Therefore, on the basis of our review, the adoption of the majority vote requirement would appear to represent a retrogression in the position of black voters.

Accordingly, and for the reasons stated above, I must, on behalf of the Attorney General, object to the imposition of the majority vote requirement, embodied in Act No. 1167 (H.B. No. 1531 (1980)).

Should the City of Augusta modify its electoral system to afford black voters a fair opportunity to elect candidates of their choice, the Attorney General will consider withdrawing the objection. For example, the city may wish to adopt a fairly drawn single-member district plan. See City of Petersburg, Virginia v. United States, 354 F. Supp. 1031 (D. C.C. 1973), cert. den., 416 U.S. 962 (1973); City of Richmond v. United States, 422 U.S. 358 (1975). A properly drawn single-member district plan should provide black voters with an opportunity to achieve representation reasonably equivalent to their political strength and, therefore could provide a basis for the withdrawal of the objection here interposed.

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 change neither has 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. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 45 Fed. Reg. 279) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the majority vote requirement in Act No. 1107 (H.R. No. 1531 (1980)) legally unenforceable.

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 City of Augusta plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-726-7439) of our staff.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division