



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

22 NOV 1982

Mr. S. T. Ellis
City Attorney
35 Griffin Street
McDonough, Georgia 30253

Dear Mr. Ellis:

This is in reference to the districting of councilmanic districts and the increase in candidate qualification fees for persons filing for the positions of mayor and councilmember for the City of McDonough in Henry 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 received on August 6, 1982, and supplemented on September 23, 1982. Although we noted your request for expedited consideration, we have been unable to respond until this time.

The Attorney General does not interpose any objection to the ordinance relating to candidate qualification fees. 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 change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to the districting of councilmanic districts, we have made a careful analysis of the information that you have provided, the events surrounding the enactment of this change, the information in our files with respect to the preclearance of related changes, and comments and information provided by other interested parties. On the basis of that analysis we are unable to conclude that the submitted plan does not have a discriminatory purpose and effect.

Our review of this matter shows that, according to the 1980 Census, the population of the City of McDonough is 2,778 persons, of whom 1,047 (37.7%) are black. A further analysis of the Census data indicates that approximately 96 percent of those black persons reside in the southern portion of the city and that they--together with neighboring whites--comprise about 50 percent of the total city population. Blacks constitute 72.2 percent of the total population in this compact community within the city.

We have relied on the 1980 Census in evaluating the city's submission, notwithstanding your request that we look instead to an independent head count conducted by the city indicating that the total population of the city is 2,404 persons, of whom 774 (32.2%) are black. The city has never formally contested the 1980 Census count, and we therefore are not inclined to disregard it. Moreover, we find unpersuasive the city's arguments for assuming the 1980 Census to be incorrect, and we remain skeptical about the accuracy of the alternative population figures submitted.

Our analysis of the submitted plan indicates that its likely effect will be to dilute the voting strength of black residents of the city. Under the proposed plan, black voters will be able to elect a candidate of their choice to the city council in only one district, although blacks now constitute a majority of the population in a compact community which contains half of the total city population from which two districts, each with a black population which would enable blacks to elect representatives of their choice, could be drawn. It would appear, also, that the plan unnecessarily fragments the black community by placing an overly large number of blacks into Precinct 1 and dividing the remainder between Precincts 2 and 4, with the apparently intended result that black voters--while comprising over 37 percent of the city population--will have a meaningful influence on the election of councilmembers in only one of the four single-member precincts, and likely can elect a candidate of their choice to only one of six council seats.

Under these circumstances I am unable to conclude, as I must under the Voting Rights Act, that the submitted plan does not have the purpose and will not have the effect of abridging the right to vote on account of race. See Beer v. United States, 425 U.S. 130, 141 (1976); Wilkes County v. United States, 450 F. Supp. 1168, 1177-1178 (D. D.C. 1978), aff'd, 439 U.S. 999 (1978); Georgia v. United States, 411 U.S. 538 (1973); Busbee v. Smith, Civil Action No. 82-0665 (D. D.C. July 22, 1982). Accordingly, on behalf of the Attorney General, I must interpose an objection to the submitted districting plan.

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 this plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) 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 this plan legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of McDonough plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds". The signature is written in a cursive style with a large, sweeping initial "W".

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division