



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 2, 1991

R. Chris Phelps, Esq.
Heard, Leverett & Phelps
P.O. Drawer 399
Elberton, Georgia 30635-0399

Dear Mr. Phelps:

This refers to the annexation embodied in Ordinance No. 951 (1989) and the apportioning of the annexed area to single-member election districts for the City of Elberton in Elbert 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. We received your last submittal of information necessary to review these matters on May 2, 1991.

This also refers to the 23 other annexations (Ordinance Nos. 644, 646, 655 (1971); 688 (1973); 707, 711, (1975); 727 (1976); 747 (1977); 832 (1982); 838, 842, 851 (1983); 879, 882 (1985); 893, 907 (1987); 911, 918 (1988); 962, 965, 971 (1990); Resolution (Sep. 8, 1986); and Council Action 1978 (E-41-00-7A and 12) for the City of Elberton, submitted to the Attorney General pursuant to Section 5. We received your submission of these annexations on May 2, 1991.

We have considered carefully the information you have provided, along with Census data and comments and information from other interested persons. The Attorney General does not interpose any objection to the twenty-three annexations specified in the paragraph next preceding. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We cannot, however, reach a similar conclusion with regard to the voting changes relating to the annexation adopted under Ordinance No. 951 (1989) and the apportionment of the annexed population to single-member election districts. At the outset, we note that, despite our efforts to obtain such information, the city has not provided reliable current population data for the districts as they would exist after the proposed apportionment. In that regard, we note that the city's existing districting plan provides for two districts out of five in which minority voters have a realistic opportunity to elect candidates of their choice. These district configurations include within them the annexed areas precleared above. However, the substantial population added to the city by Ordinance No. 951 is not included within existing district lines and, thus, the city's submission also involves an apportionment of that annexation to the existing districts.

In applying to these changes the limited information we do have, we note that the proposed apportionment of the annexed population appears to increase unnecessarily the black proportion of District 2 while the black proportion of District 1 is reduced to such a degree that the opportunity presently provided for black voters in that district may be jeopardized. Yet, it appears that alternatives were available that would have avoided this result. In addition, it appears that these choices were made even though the city's black proportion as a whole has increased since 1980, with a large measure of that increase seeming to occur within existing Districts 1 and 2.

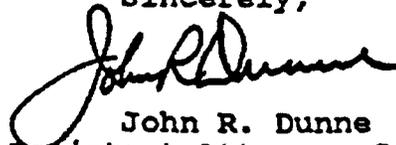
Furthermore, our analysis of 1990 Census data suggests that proposed Districts 1 and 2 may be overpopulated, while District 3, an adjoining white majority district, is significantly underpopulated. Such a situation would seem to provide a ready-made opportunity to fully recognize the potential of the black electorate to elect candidates of their choice. Yet, the city has made no attempt to amend or even reconsider its proposed apportionment scheme in light of 1990 Census data, although the data developed by the city itself indicate that such reconsideration well might be appropriate and concerns have been brought to the city's attention with regard to the effect of the proposed apportionment on minority voting strength.

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 your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the voting changes occasioned by Ordinance No. 951 (1989) relating to the annexation and the apportioning of the annexed area to the city's single-member election districts.

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 proposed changes have 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, the annexation under Ordinance No. 951 (1989) and the apportioning of the annexed area to election districts continue to be legally unenforceable insofar as they affect voting. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 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 City of Elberton plans to take concerning these matters. If you have any questions, you should call Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Joseph Fendley
Mayor, City of Elberton