



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 17, 1994

James E. Gonzales, Esq.  
Gonzales & Gonzales  
P. O. Box 60715  
North Charleston, South Carolina 29419-0715

Dear Mr. Gonzales:

This refers to eight annexations (Ordinances Nos. 1992-43, 44, 45, and 57, 1993-4, and 1994-8, 9, and 12) to the City of North Charleston in Berkeley, Charleston, and Dorchester Counties, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. On August 18, 1994, we received your most recent response to our January 3, 1994, request for additional information with respect to five of the submitted annexations, which also constituted your response to our August 9, 1994, request for additional information with respect to the other three submitted annexations.

We have carefully considered the information you have provided, as well as information from other interested persons and information provided by the city in its prior annexation submissions. According to the 1990 Census, North Charleston has a total population of 70,218, of whom 34 percent are black. Since its incorporation in 1972, the City of North Charleston has been a strong advocate of annexation. The city has grown more than sevenfold in geographic area since 1972 and has more than tripled in population. At least since the early 1980s, its annexation efforts appear generally to have been directed at adjacent areas that are heavily white in population. Our records indicate that about 85 percent of the persons annexed in the 1980s were white and, similarly, the post-1990 annexations (including the annexations now before us for preclearance) are, as group, 85 percent white in population.

While the city has annexed these white-populated areas, communities that have not been annexed and are overwhelmingly black in population are located along the southern border of the city; indeed, several of these black residential areas are located in "doughnut holes" formed by the city's prior annexation of surrounding territory. Recently, a number of these areas have expressed interest in annexation. The Union Heights area submitted an annexation petition to the city, but has not been annexed, while we understand that other black-populated areas are in the process of circulating annexation petitions.

The Union Heights annexation petition was rejected by the city while the areas included in the submitted annexations were accepted. Ostensibly, the rejection was because its petition was technically deficient and because the petition did not include the minimum number of signatures required by South Carolina law. In other annexation efforts, however, the city itself typically has assumed responsibility for preparing the technical aspects of an annexation petition (e.g., the annexation area map and legal description). Similarly, when past petitions have fallen short of the necessary number of signatures, the city has redrawn the annexation map to narrow the size of the proposed annexation area. The city has failed to explain why these same steps were not taken with the Union Heights petition.

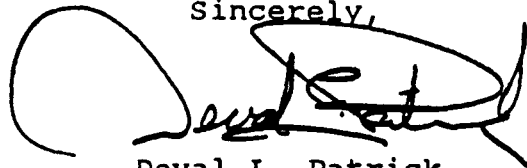
Under Section 5 of the Voting Rights Act, a covered jurisdiction has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. To demonstrate the absence of discriminatory purpose with respect to annexations, a jurisdiction must demonstrate that the revision of boundary lines to "includ[e] certain voters within the city [while] leaving others outside," was not based, even in part, on race. Perkins v. Matthews, 400 U.S. 379, 388 (1971). See also City of Pleasant Grove v. United States, 479 U.S. 462 (1987). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city has sustained its burden by showing that, regardless of the race of those seeking annexation, adjacent areas are provided an equal opportunity to obtain annexation to the city. Therefore, on behalf of the Attorney General, I must object to the submitted annexations.

We note that under Section 5 the City of North Charleston has the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the annexations 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, the city 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 annexations continue to be legally unenforceable insofar as they affect voting. Clark v. Roemer, 500 U.S. 646 (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 North Charleston plans to take concerning this matter. If you have any questions, you should call Special Section 5 Counsel Mark A. Posner, at (202) 307-1388.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval Patrick", written over a large, loopy circular flourish.

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

AUG 20 1996

J. Brady Hair, Esq.  
City Attorney  
Post Office Box 190016  
North Charleston, South Carolina 29419-9016

Dear Mr. Hair:

This refers to 31 annexations adopted from 1995 to 1996 (listed on Attachment A) and the designation of the annexed areas to districts for the City of North Charleston in Berkeley, Charleston and Dorchester Counties, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission of these annexations on April 29, 1996; supplemental information was received on June 14, 21, 24, 25, 26, 27, and 28, and July 26, 1996.

This also refers to five annexations (Ordinance Nos. 1994-21 and 31, and 1996-18, 24 and 25) and the designation of the annexed areas to districts. We received your submissions on July 5 and 19, 1996; supplemental information was received on July 22, 23 and 26, 1996.

Finally, this refers to your request that the Attorney General reconsider and withdraw the October 17, 1994, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to eight annexations (Ordinance Nos. 1992-43, 44, 45, and 57, 1993-4, and 1994-8, 9 and 12) to the City of North Charleston. We received your request on April 29, 1996; supplemental information was received on June 21 and 27, and July 26, 1996.

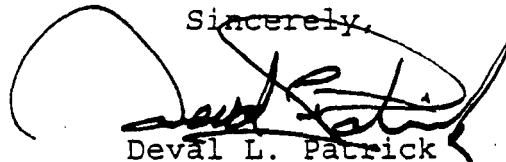
With regard to the 31 annexations identified on Attachment A and the five annexations adopted pursuant to Ordinance Nos. 1994-21 and 31, 1996-18, 24 and 25, the Attorney General does not interpose any objection to the specified changes. However, we

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. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

We note that the annexations that have been precleared include areas located along the southern border of the city that are predominantly black in population, such as those areas annexed in the Union Heights community. The city's previous failure to annex such areas formed the basis for our previous conclusion that the city had failed to establish that its annexation policies were racially nondiscriminatory. The annexation of these areas resolves our prior concerns.

Accordingly, pursuant to Section 51.48(b) of the Procedures for the Administration of Section 5 (28 C.F.R.), the objection interposed to eight annexations (Ordinance Nos. 1992-43, 44, 45, and 57, 1993-4, and 1994-8, 9 and 12) is hereby withdrawn. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See 28 C.F.R. 51.41.

Sincerely,



Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

ATTACHMENT A

ORDINANCE NUMBER	DATE ADOPTED
1995-18	5/25/95
1995-24	6/29/95
1995-25	7/13/95
1995-26	7/13/95
1995-32	8/10/95
1995-33	8/24/95
1995-36	9/14/95
1995-43	9/28/95
1995-44	9/28/95
1995-45	9/28/95
1995-46	10/12/95
1995-47	10/12/95
1995-48	10/12/95
1995-49	10/12/95
1995-64	12/14/95
1995-65	12/14/95
1995-66	12/14/95
1995-73	12/28/95
1995-74	12/28/95
1995-75	12/28/95
1995-76	12/28/95
1995-77	12/28/95
1995-78	12/28/95
1995-79	12/28/95
1995-80	12/28/95
1995-81	12/28/95
1995-82	12/28/95
1995-83	12/28/95
1995-84	12/28/95
1996-07	2/22/96
1996-08	2/22/96