



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 25, 2008

Dan Head, Esq.
Wallace, Ellis, Fowler & Head
P.O. Box 587
Columbiana, Alabama 35051

Dear Mr. Head:

This refers to 177 annexations, their designations to districts, and the 2008 redistricting plan for the City of Calera in Shelby County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our May 7, 2008, request for additional information on June 24, 2008; additional information was received through August 18, 2008.

According to the 2000 Census, the City of Calera has a total population of 3,158 persons, of whom 628 (19.9%) were identified as African American. We understand that the city has experienced sizeable growth since that time, due primarily to residential development on the 177 annexations now under review. The city has provided estimates that its population is at 10,806 persons as of December 2006, of whom 20 percent are identified as African American.

The submitted annexations and redistricting plan would eliminate the city's sole majority African-American district. This district and the single-member district method of election were adopted pursuant to a consent decree approved 18 years ago by the court in Dillard v. City of Calera, Civil Action No. 2:87cv1167-MHT. Under this arrangement, the district has elected an African-American candidate for the last 20 years.

We have carefully considered the information you have provided, as well as information and materials from other interested parties. Under Section 5 of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Public Law 109-246, 120 Stat. 577 (2006) ("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 also Georgia v. Ashcroft, 123 U.S. 2498 (2003); Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52 (c). As discussed further below, I cannot conclude that the city has sustained its burden of showing that the proposed change does not have a discriminatory purpose or effect. Therefore, based on the information available to us, I object to the voting changes on behalf of the Attorney General.

The United States Supreme Court has held that where annexations decrease minority voting strength, the reasons for the annexations must be objectively verifiable and legitimate,

and the post-annexation election system must fairly reflect the post-annexation voting strength of the minority community in the expanded city. City of Richmond v. United States, 422 U.S. 358, 370-3 (1975); see also, City of Pleasant Grove v. United States, 479 U.S. 462 (1987); City of Port Arthur v. United States, 459 U.S. 159 (1982); City of Rome v. United States, 446 U.S. 156 (1980).

For 13 years, the city has failed to submit their adopted annexations for Section 5 review. Our Department has not received an annexation submission from the city since 1993, and the city admits that it is at fault for not submitting the 177 annexations. The only submission in the last 13 years was a proposed redistricting plan based on the 2000 Census which included no mention of the missing annexations.

In a similar situation, the United States Supreme Court in City of Rome v. United States, 446 U.S. at 186, made it clear that the current population of the annexations needs to be included for Section 5 review:

Because Rome's failure to preclear any of these annexations caused a delay in federal review and placed the annexations before the District Court as a group, the court was correct in concluding that the cumulative effect of the 13 annexations must be examined from the perspective of the most current available population data.

The Supreme Court found that the City of Rome failed to provide the necessary information about total population, voting age population, and a racial composition for each. *Id.* Likewise, the City of Calera also has failed to provide any reliable current population information about the 177 annexations here.

The demographic data provided by the city regarding total population and voting age population in the city as a whole is also unreliable. Beginning with total population, the city used certificate of occupancy data to estimate total population in December 2006 of 10,806. The city arrived at this number by decreasing the persons per household multiplier of 2.3 significantly from the 2000 Census without explanation. Had the city used the 2000 Census number, the population estimate would have been approximately 12,000 persons. The United States Census Bureau estimated the population in July 2006 at 8,329 and in July 2007 at 9,398. The city has not explained why its population estimate is substantially higher than the Census estimate. Likewise, the city fails to provide reliable voting age population.

The estimate of racial composition in the city has no basis. The city has claimed that the population is 20 percent black throughout the newly annexed areas, but no attempt has been made to determine their composition. Simply because black population in the city was 20 percent of the population in 2000, does not mean that would be the percentage of black population in the newly annexed areas. In fact, both city-wide voter registration and school data in recent years appear to show growth in the black population. In failing to provide adequate numbers to evaluate the annexations and concomitant redistricting plan, the city fails to meet its burden of proof.

The City of Calera also appears to have failed to consider how the African-American population would be fairly reflected in the post-annexation election system moving forward. In March 2007, three months prior to the adoption of the proposed redistricting plan, the State of Alabama and plaintiffs filed a Joint Motion to Show Cause asking why the case should not be dismissed. In that order to show cause, they stated that the Alabama legislature in Act No. 2006-252 provide that the Calera City Council can increase the size of the city council under the single-member district method of election by general or local law in the future. The court dissolved the consent decree on May 9, 2007. According to the geographer hired by the city, he was willing to provide information for the city to consider alternative methods of election that would have provided black voters a better opportunity to elect a candidate of choice, but the city council expressed no interest in these alternatives.

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 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. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District Court for the District of Columbia is obtained, the annexations and concomitant redistricting plan will continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Calera plans to take concerning this matter. If you have any questions, you should call Eric Rich (202-305-0107), an attorney in the Voting Section.

Sincerely,



Grace Chung Becker
Acting Assistant Attorney General