



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

26 MAR 1984

Thomas M. Boulware, Esq.
Brown, Jeffries & Boulware
P. O. Box 248
Barnwell, South Carolina 29812

Dear Mr. Boulware:

This refers to Act No. 960, R1117 (1966) which provides for four-year staggered terms for the election of the mayor and six aldermembers in the City of Barnwell in Barnwell County, 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. We received your initial submission on August 11, 1983; supplemental information was received on January 26, 1984.

We have given careful consideration to the information you have provided as well as Census data and comments and information provided by other interested parties. According to the 1980 Census, the city is 37.7 percent black. Aldermembers are elected under the at-large method of election with staggered terms and our analysis indicates that racially polarized voting patterns exist.

Although black candidates have run for the position as aldermember in seven of the last nine elections, none has ever been elected. Under such circumstances, reducing the number of positions available in each election, as the result of the imposition of staggered terms, has the effect of limiting the potential for minority voters to elect the candidate of their choice and, thus, constitutes a retrogression in the position already gained by the affected minority group in the political process. Such a retrogression would have the effect of denying or abridging the right to vote on account of race or color. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or 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. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the implementation of Act No. 960.

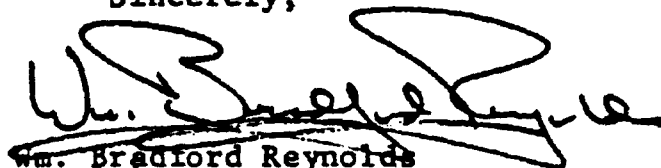
Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines 28 C.F.R. 51.44 permits you to 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 effect of the objection by the Attorney General is to make Act No. 960 legally unenforceable. 28 C.F.R. 51.9.

Finally, we note that the city is presently implementing a majority vote feature which appears not to have been precleared under Section 5 of the Voting Rights Act since our records fail to show that the majority vote requirement has been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Act. If our information is correct, it is necessary that this change either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that the change does not have the purpose and will not have the effect of discriminating on account of race or color. Changes in procedure which affect voting are unenforceable unless and until the Section 5 preclearance requirements have been met. See the enclosed Procedures for the Administration of Section 5 (28 C.F.R. 51.9).

Should you elect to submit majority vote change to the Attorney General, please follow the procedures set forth in Section 51.18 et seq. of the guidelines.

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 Barnwell plans to take with respect to these matters. If you have any questions, feel free to call Ms. Sandra S. Coleman, Deputy Director of the Section 5 Unit of the Voting Section. Refer to File Nos. H5201 H7207 in any response to this letter so that your correspondence will be channeled properly.

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