



U.S. Department of Justice

Civil Rights Division

---

Office of the Assistant Attorney General

Washington, D.C. 20530

August 31, 1984

C. Havird Jones, Jr., Esq.  
Assistant Attorney General  
P. O. Box 11549  
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to your request that the Attorney General reconsider the March 26, 1984, objection interposed to Act No. 960, R117 (1966), which provides for four-year, staggered terms and to your initial submission of the majority vote requirement for the election of the mayor and board of aldermembers for the City of Barnwell in Barnwell County, South Carolina. We received both your request for reconsideration and your submission on July 2, 1984.

With regard to the request for reconsideration of the March 26, 1984, objection to Act No. 960 (1966), we have reviewed carefully the information that you have provided and the arguments which you have advanced, as well as comments and information furnished by other interested parties. However, we find no basis for altering the conclusions that led to the initial Attorney General's decision. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

We likewise have given careful consideration to the information you have provided concerning the adoption of a majority vote requirement, as well as to Census data and comments and information obtained from other interested parties with respect to that issue. According to the 1980 Census, the city is 37.7 percent black and our analysis indicates that racially polarized voting patterns exist.

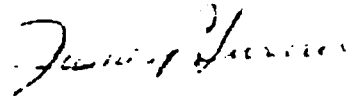
Because the only legally enforceable method of election for the City of Barnwell is at-large with a plurality vote requirement and concurrent terms, we have reviewed the proposed change to majority vote in that context. Implementation of the majority vote requirement, coupled with the at-large method of election and in the context of racial bloc voting, increases the likelihood of "head-to-head" contests between black and white candidates, thus diminishing the opportunity that would otherwise exist for blacks to utilize single-shot voting for a candidate of their choice. Under these circumstances, the change to majority vote constitutes an impermissible retrogression in the position of the affected minority group in the political process, a situation which has 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); and 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 the majority vote requirement.

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 neither of these changes has either the purpose or will have the effect of denying or abridging the right to vote on account of race or color. Also, particularly in regard to the majority vote requirement, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, as previously noted with regard to the staggered terms matter, until the objections have been withdrawn or appropriate judgments from the District of Columbia Court have been obtained, the effect of the objections by the Attorney General is to make the staggered terms and the majority vote requirement legally unenforceable. 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 Barnwell plans to take with respect to these matters. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,



James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division