



U.S. Department of Justice

Civil Rights Division

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Office of the Assistant Attorney General

Washington, D.C. 20530

February 24, 1986

Richard J. Breibart, Esq.  
Griffith, Coleman, Sawyer  
& Breibart  
P. O. Box 1318  
Lexington, South Carolina 29072

Dear Mr. Breibart:

This refers to the adoption of a council form of government and a majority vote requirement for the City of Batesburg in Lexington and Saluda 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. We received the information to complete your submission on December 26, 1985.

We have considered carefully the information you have provided, as well as comments and information from other interested parties. With regard to the adoption of the council form of government, the Attorney General does not interpose any objection. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

We are not able to reach the same conclusion with regard to the majority vote requirement. Under the city's election system, the mayor and the six councilmembers are elected at large, with the councilmembers being required to reside in specified districts. Our analysis of elections in Batesburg

raises a clear inference that voting in elections involving black candidates is polarized along racial lines and that this voting pattern has hampered the ability of black voters to elect candidates of their choice. The city has not provided us with sufficient information to counter this conclusion.

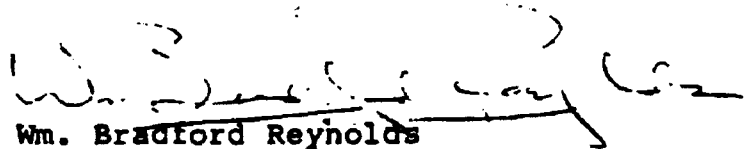
In this context, the incorporation of a majority vote requirement, which increases the probability of "head-to-head" contests between black candidates and white candidates, will in all likelihood dilute minority voting strength and thereby exacerbate the election difficulties currently faced by black voters. See, e.g., Rogers v. Lodge, 458 U.S. 613, 627 (1982); City of Port Arthur v. United States, 459 U.S. 159 (1982).

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 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 the city has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to 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 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 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 the majority vote requirement legally unenforceable in the City of Batesburg. 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 Batesburg plans to take with respect to this matter. If you have any questions, feel free to call Steven H. Rosenbaum (202-724-8388), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm. Bradford Reynolds", is written over a horizontal line. The signature is fluid and cursive.

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division