

WBR:SSC:NG:jmc:dvs
DJ 166-012-3
X2028; N9532-9537
K5329; K6887; N9531
K6888; R1729-2054
M0982; N9522-9529
M4898-4899; M4901
N9530

October 10, 1986

Mr. Joseph F. Christie, Jr.
Planning Director
104 Civic Center
Summerville, South Carolina 29483

Dear Mr. Christie:

This refers to the 649 annexations accomplished from 1964 to 1986; the adoption of staggered terms; the procedures for conducting the October 3, 1972, September 12, 1983, and September 12, 1984, special elections; and the establishment of Fire Station No. 3 as a polling place in the Town of Summerville in Dorchester 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 initially received information relating to some of the annexations involved in this submission on October 31, 1984; supplemental information and information about other annexations necessary to complete your submission were received on March 1 and June 1, 1985, and February 14, and August 11, 1986.

We have considered carefully the information you have submitted, data from the 1960, 1970 and 1980 Censuses and information provided by other interested parties. Based upon our review, the Attorney General does not interpose any objections to the 77 annexations shown to have occurred between 1964 and 1979 nor to the post-1980 annexations, identified on the attached list, which are zoned for nonresidential use. The Attorney General also interposes no objection to the procedures for conducting the October 3, 1972, September 12, 1983, and September 12, 1984, special elections or to the establishment of Fire Station No. 3 as a polling place. 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 any of these changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to the remaining post-1980 annexations and the adoption of staggered terms, we are unable to reach a similar conclusion. At the outset, we note that although there have been a number of minority candidacies, black voters have been unable to elect a candidate of their choice to the town council. This appears in substantial part to be the result of a general pattern of racially polarized voting occurring in the context of the Summerville at-large election system which has been exacerbated by the imposition since 1979 of the staggered terms requirement. Staggered terms reduces the number of positions available in each election, thus, further limiting the potential for minority voters to elect the candidates of their choice. Under Beer v. United States, 425 U.S. 130 (1976), such a requirement, in the circumstances of Summerville, would appear to have the proscribed retrogressive effect.

Against the above-described electoral milieu, the post-1980 residential annexations, contrary to the annexations occurring during the earlier period, decreased the town's minority population by approximately 7 percent, and served more effectively to exclude blacks totally from participation in the governing of the town through membership on the council, an effect not permissible under the Voting Rights Act. See City of Richmond v. United States, 422 U.S. 358, 370 (1975). In addition, the treatment afforded the predominantly black areas of Brownsville and Germantown raises concerns about what appears to be a recent pattern of annexations calculated to take in whites to the exclusion of blacks, a concern that has not been satisfactorily addressed by the city. See City of Pleasant Grove v. United States, Civil Action No. 80-2589 (D. D.C. Oct. 7, 1981).

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 view of the considerations discussed above, we cannot conclude that the city's burden has been sustained with regard to the post-1980 residential annexations. Therefore, on behalf of the

Attorney General, I must object to the post-1980 annexations not reflected on the attached list, as well as to the use of the staggered terms requirement discussed earlier.

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 these changes 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, 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 staggered terms provision and the referenced post-1980 annexations, insofar as they affect voting, 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 Town of Summerville plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division