U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

JUN 13 1989

Mr. Paul S. Paskoff
City Administrator
P.O. Box 1149
Lancaster, South Carolina 29720

Dear Mr. Paskoff:

This refers to the change in the method of electing the city council from seven members, including the mayor, elected at large by plurality vote to six members elected from single-member districts by plurality vote and three members, including the mayor, elected at large by plurality vote to staggered terms (5-4); an increase in the number of councilmembers from seven to nine; the implementation schedule; and the districting plan for the City of Lancaster in Lancaster 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 the information to complete your submission on April 14, 1989.

We have considered carefully the information and materials you have supplied, along with information available to us from other interested parties, our files, and the Bureau of the Census. At the outset, we note that even though black persons constitute over 41 percent of the city's population, at no time has the seven-member city council included more than one black member, a circumstance that appears to be due largely to a pattern of racially polarized voting in municipal elections. We further note that the process leading to adoption of the proposed changes began with the development of election plans based on the existing number of councilmembers. One such plan featured six single-member districts and the at-large election of a mayor, a system referred to as the 6-0-1 plan. With three black-majority districts, that plan ostensibly would provide

black voters with the opportunity to elect 43 percent of the council representation which, in turn, would essentially mirror the black percentage of the city's population. It appears that the idea of expanding the size of the council to include two at-large members occurred subsequent to the development of this 6-0-1 system and, indeed, much of our information indicates that such increase in minority voting strength was a major motivation for the adoption of the alternative 6-2-1 system. In that regard, it is noteworthy that the preferences as between the 6-0-1 and 6-2-1 systems appear to have been exercised along racial lines and that the proposed changes were adopted over the recommendation of the state's expert demographer and in spite of virtually unanimous black opposition.

Information available to us further suggests that another major consideration in deciding to expand the council size and incorporate two at-large seats was to protect incumbent white councilmembers. While preservation of incumbency is not necessarily an inappropriate consideration, it cannot be accomplished at the expense of minority voting potential. Where, as here, the mechanism employed to preserve incumbencies serves to limit or deny the affected minority an equal opportunity to elect candidates of their choice, it is not necessary to distinguish "discrimination based on an ultimate objective of keeping certain incumbent whites in office from discrimination borne of pure racial animus." Ketchum v. Byrne, 740 F.2d 1398, 1408 (7th Cir. 1984).

We recognize that the city has stated that the primary reason for incorporating the two at-large seats in the 6-2-1 system is to provide representation to the 30.4 percent of minorities who allegedly reside in white-majority districts under the proposed districting plan. Correctly calculated, however, the data you have provided establish that only 487 or 12 percent of the city's 4,019 black citizens reside in the three white-majority districts. To date, the city has failed to provide any other legitimate, nonracial reason for expanding the size of the council by adding two at-large members.

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. 51.52(c)). In satisfying its burden, the submitting authority must demonstrate that the proposed changes are not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting changes. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd 459 U.S. 1166

(1983). In light of the circumstances 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 election method changes proposed herein for the City of Lancaster.

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 51.45 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 method of election changes adopted under the city's December 13, 1988, Ordinance No. 88-40 remain legally unenforceable. 28 C.F.R. 51.10.

Because the submitted implementation schedule was established to implement the objected-to changes, the Attorney General is unable to make a determination with regard to it. 28 C.F.R. 51.35.

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 Lancaster plans to take with respect to these matters. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8290), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division