



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 7 1990

Tyre Douglas Lee, Jr., Esq.  
City Attorney  
P. O. Box 56  
Chester, South Carolina 29706

Dear Mr. Lee:

This refers to the candidate filing fees for city council and mayor for the City of Chester, in Chester 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 March 9, 1990.

We have carefully considered the information you have provided as well as information from the Census and other interested parties. We note that candidates in city elections were not required to pay any filing fee prior to 1981 when the city council adopted candidate filing fees of \$150.00 for a city council position and \$250.00 for mayor. These fees amount to over 6% of the annual salaries of the offices in question. Moreover, the city made no provision for any alternative means of securing a place on the ballot for those unable to pay the filing fee.

Census data reveal that black persons in the City of Chester have income levels far below those of white persons. These figures suggest that the city's filing fees would have a disproportionate impact on black citizens who desire to become candidates for city office. Indeed, in holding that Texas' filing fee system violated the Fourteenth Amendment the Supreme Court pointed out "the obvious likelihood that this [filing fee] limitation would fall more heavily on the less affluent segment of the community." Bullock v. Carter, 405 U.S. 134, 144 (1972). Since, as our analysis indicates, elections for city office are characterized by racial bloc voting, the limitation on black candidacies occasioned by the high filing fees serves to limit the choices available to black voters, thus reducing the opportunity of minority voters to elect candidates of their choice.

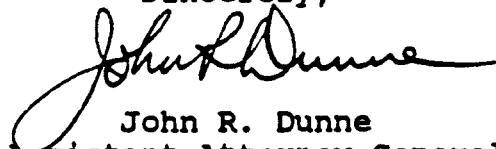
The city has presented no overriding governmental interest supporting the submitted filing fee requirement and none is apparent. Similarly sized cities near Chester have much lower fees (e.g., Lancaster: \$50 for mayor; \$35 for council), or no fees at all (e.g., Camden and Union). The city's asserted interest that candidates, not taxpayers, should pay the costs of elections was found to be unconstitutional. See Bullock v. Carter, 405 U.S. at 144-149. There would also appear to be a constitutional question regarding Chester's filing fee requirement since no comparable alternative method of ballot access is made available for those unable to pay the filing fee. See Lubin v. Panish, 415 U.S. 709 (1974).

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). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city has carried its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the candidate filing fees imposed by the City of Chester.

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 51.45 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 submitted change continues to be legally unenforceable. 28 C.F.R. 51.10.

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 Chester plans to take with respect to this matter. If you have any questions, feel free to call George Schneider (202-724-8385), an attorney in the Voting Section.

Sincerely,



John R. Dunne  
Assistant Attorney General  
Civil Rights Division