



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

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Jeffrey N. Thordahl, Esq.
Assistant Legal Counsel to
the Governor
P. O. Box 11369
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Dear Messrs. Askins and Thordahl:

This refers to seven annexations (Young's Food Store, adopted May 8, 1986; Pine Crest, referendum held November 10, 1987, adopted December 10, 1987, and readopted February 11, 1988; the Hastings lot, adopted February 11, 1988; the Carmichael land, adopted April 14, 1988; the Eddy land, adopted June 9, 1988; the Dionne lot, adopted August 10, 1989; and the Wellman land, adopted December 12, 1991) and the postponement of the July 12, 1994, town election for the Town of Hemingway in Williamsburg 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 Hemingway's response to our request for additional information concerning the annexations on May 23 and June 6, 1994. We also received the submission of the postponement of the town election on May 23, 1994.

This also refers to the submission under Section 5 of the proposed county boundary change that would transfer a portion of Williamsburg County to Florence County, South Carolina. We previously advised on April 1, 1994, that we were unable to make a determination at that time because this change is directly related to the annexations submitted by the Town of Hemingway and, on that date, we made a written request for additional information regarding the annexations. The receipt of the town's response accordingly also has reopened this matter.

We have carefully considered the information provided by the submitting authorities in these matters, as well as information from other interested persons. Based on this review, the Attorney General does not interpose any objection to the Young's Food Store and Wellman annexations, which we understand are only commercial in nature, and also do not object to the postponement of the July 1924 town election. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

However, we are unable to reach the same conclusion with respect to the other annexations to the Town of Hemingway and the proposed county boundary change. Under Section 5, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In this regard, a political boundary change may not be precleared that includes certain voters in a jurisdiction and leaves others outside based on racial considerations. City of Pleasant Grove v. United States, 479 U.S. 462 (1987); Perkins v. Matthews, 400 U.S. 379 (1971).

Turning first to the Hemingway annexations, the 1990 Census reports that Hemingway has a total population of 829, of whom three percent are black. According to the town, at the time the submitted annexations were adopted they had an all-white population of 302 (the town also indicates that since then the population in the annexed areas has decreased to 211 including three black residents). In addition, in 1976 the town obtained Section 5 preclearance for several annexations which at the time were reported as containing an all-white population of 45 residents.

At the time the submitted annexations were adopted, there were two significant population concentrations immediately adjacent to Hemingway, the all-white Pine Crest area which the town annexed in 1987, and the Donnelly area in which virtually all of the residents are black. The Donnelly area sought annexation in 1976 (at the time it had a population of about 850 according to newspaper reports). In the dual annexation referenda held in January 1977 (pursuant to state law), the Donnelly area voted almost unanimously for annexation but the town voted it down by a large margin. The Donnelly area remains interested in annexation, as evidenced by the recent petition it submitted to the town.

According to the town, its annexation decisions have been motivated by a concern for providing services to persons located outside the town limits, and the reason for the town's rejection

of the Donnelly annexation request was the expense that would have been involved in providing services to that area, primarily with regard to installing water and sewer lines in that community. However, the circumstances surrounding the Donnelly annexation request in the 1970s, and the town's approach to the similarly situated Pine Crest area, raise significant doubts as to the town's motivations.

Prior to the Donnelly annexation referendum, officials with the local regional planning agency stressed that if the town were to annex the Donnelly area, it would not be obligated to immediately undertake the water and sewer project, and that the town could seek federal funding for that effort. Indeed, just two and a half months after the negative referendum vote, the town did a turnabout on the question of assuming responsibility for the water and sewer project, agreeing to seek federal funding on Donnelly's behalf with the understanding that the town might be required to pay about 10 percent of the project. The funding then was obtained and the project was completed.

In mid-1980s, Pine Crest came to the town also seeking annexation to obtain water and sewer services. The town agreed to the annexation in order to provide these (and other) services, and obtained grants to pay for the water and sewer project. Prior to the Pine Crest annexation, the local regional planning agency studied the financial feasibility of annexing Pine Crest and Donnelly, and concluded that annexation of Donnelly would be appropriate but that annexation of Pine Crest would be problematic. Nevertheless, Pine Crest was annexed and Donnelly was not.

Turning now to the proposed county boundary line change, it is proposed that an area in the northeastern corner of Williamsburg County transfer to adjacent Florence County. The area at issue has a total population of about 2,500, of whom about 21 percent are black. Williamsburg County is 64 percent black in population while Florence County is 39 percent black.

This proposal is directly related to the Hemingway annexations because the town is included in the proposed transfer area and state law prohibits altering a county boundary in such a manner as to divide a town between two counties. The proposed transfer area does not include the Donnelly community. Thus, the town's discriminatory definition of its town boundaries in turn infects the definition of the proposed county transfer area.

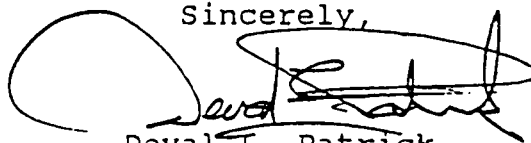
In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the Section 5 burden has been sustained with regard to these matters. Therefore, on behalf of the Attorney General, I must object to

the five residential annexations submitted by Hemingway and the proposed boundary change between Williamsburg and Florence Counties.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed 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, you may request that the Attorney General reconsider the objections. However, until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the five residential annexations continue to be legally unenforceable insofar as they affect voting, and the proposal to alter the Williamsburg/Florence county line also continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action you plan to take concerning these matters. If you have any questions, you should call Special Section 5 Counsel Mark Posner, at (202) 307-1388.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval Patrick", written over a horizontal line.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division