

Mr. John S. Davenport, III
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Dear Mr. Davenport:

This is in reference to your submission under Section 5 of the Voting Rights Act of 1965 of the 1971 annexation to the City of Petersburg, Virginia. Your submission was received on December 24, 1971. The sixty days which the Attorney General has to interpose an objection to the implementation of your proposed plan expires on February 22, 1972.

In examining an annexation under Section 5 of the Voting Rights Act, it is incumbent on the Attorney General to determine whether the annexation--either in purpose or effect--results in racial discrimination in voting. In making this evaluation we apply the legal principles which the Courts have developed in the same or analogous situation. Moreover, it is also significant that Section 5 only prohibits implementation of changes affecting voting and provides that such changes may not be enforced without receiving prior approval by the Attorney General or by the District Court for the District of Columbia. Our proper concern then is not with the validity of the annexation but with the changes in voting which proceed from it.

In the case of Petersburg, we can summarize our consideration as follows: The pre-annexation population of Petersburg was made up of 56 percent black citizens and 44 percent white citizens. The city's five-member governing body was elected at large on a plurality basis. As part of its deliberations the council considered and voted down a proposal that the election of its members be revised so that each would be elected by and would

represent a separate district. The annexation was generally supported by both black and white groups, with the exception that some black groups contended that the city should be subdivided into districts to prevent post annexation dilution of the black vote.

The city was expanded by 14 square miles and some 7,000 persons, nearly all of whom were of the white race. The present population is 47 percent black and 53 percent white. The number of councilmen was expanded from five to seven, all of whom are to be elected at large.

Unquestionably, the above facts indicate that the proportional voting strength of blacks has been reduced. The issue is whether this reduction amounts to a discriminatory effect on voting within the meaning of the Voting Rights Act. We conclude that it does. The reason lies not in the fact of annexation--Congress certainly did not intend for all southern cities to be prevented from annexing any territory. Rather, in re-adopting the at large election system in the context of a significant change of population--from black to white majority--and simultaneously rejecting a proposed ward system, the potential for an adverse and discriminatory voting effect has been written into the Petersburg election law. While the reasons the city advances for using an at large system are credible and would normally present no special problem, in the particular context of Petersburg we are unable to conclude the at large feature will not have a discriminatory effect on voting rights. Therefore, under the Voting Rights Act we must register objection to its implementation. See Holt v. City of Richmond (E.D. Va., Civil Action No. 151-71-R).

I wish to stress that this ruling relates only to the voting changes occasioned by the annexation. This objection to the implementation of such changes does not affect the validity of the annexation itself. As the Court in the Holt case ruled, one way to meet this problem would be to hold

separate at large elections for a proportional number of councilmen in the pre-annexation and annexed areas. Another would be to adopt a fairly drawn system of single member wards. The Attorney General will consider withdrawal of this objection if these or other modifications calculated to insure against a racial effect on voting are adopted.

Of course, as provided by Section 5, you have an alternative of instituting an action in the United States District Court for the District of Columbia for declaratory judgment that the changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

David L. Norman

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division