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

This is in reference to the recent annexation by the City of Lynchburg, Virginia, of approximately 18 square miles from Campbell County and approximately 7 square miles from Bedford County, which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was completed on May 15, 1975.

In examining annexations under Section 5 of the Voting Rights Act, it is incumbent on the Attorney General to determine whether the annexations, either in purpose or effect, result in racial discrimination in voting. In making this evaluation we apply the legal principles which the courts have developed in the same or analogous situations. 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 annexations but with the changes in voting which proceed from them.

We have carefully examined the submitted annexations in light of federal court decisions which have involved questions of the racially dilutive effect of annexations where political subdivisions conduct elections on an at-large basis. City of Richmond v. United States, 43 U.S.L.W. 4865 (June 24, 1975); City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972) aff'd 410 U.S. 962 (1973). Under the procedural guidelines for the administration of Section 5, the burden of proving that changes affecting voting have no racially discriminatory purpose and have had or will have no racially discriminatory effect lies with the submitting authority. Georgia v. United States, 411 U.S. 526 (1973); City of Richmond v. United States, supra; City of Petersburg v. United States, supra.

According to the data received, the overwhelming majority of the individuals residing in the annexed area are white. Our information regarding elections in Lynchburg demonstrates that the city elects its councilmen on an at-large and staggered basis and that a pattern of racial bloc voting exists generally. Moreover, the information we have examined indicates that blacks are located with the City of Lynchburg in a cognizable residential area.

Under these circumstances, commensurate with the decisions cited about we cannot conclude that the annexation submitted for review will not have a racially dilutive effect on voting in Lynchburg. Accordingly, I must on behalf of the Attorney General interpose an objection.

In City of Petersburg v. United States, supra, the court stated at page 1031:

The Court concludes then . . . in accordance with the Attorney General's findings, that this annexation can be approved only on the condition that modifications calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters are adopted, i.e., that the plaintiff shift from an at-large to a ward system of electing its city councilmen.

In City of Richmond v. United States, supra, at 4868, the court said:

Petersburg was correctly decided. On the facts there presented, the annexation of an area with a white majority, combined with at-large councilmanic elections and racial voting, created or enhanced the power of the white majority to exclude Negroes totally from participation in the governing of the city through membership on the city council. We agreed, however, that that consequence would be satisfactorily obviated if at-large elections were replaced by a ward system of choosing councilmen. It is our view that a fairly designed ward plan in such circumstances would not only prevent the total exclusion of Negroes from membership on the council but would afford them representation reasonably equivalent to their political strength in the enlarged community.

In this connection, should the city undertake to elect its councilmen from single-member districts the Attorney General will reconsider his determination of this matter.

Moreover, as set out in the Section 5 guidelines, 28 C.F.R. 51.23 and 51.24, we will examine any information not previously available to you, or any facts which we may not have considered, in support of a request to reconsider the objection interposed above.

Of course, as provided by Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these annexations have neither the purpose nor effect of denying or abridging the right to vote on account of race or color. However, until such a judgment is rendered by that court, or until the objection has been withdrawn by the Attorney General, the legal effect of the objection by the Attorney General is to render the annexations in question legally unenforceable insofar as they affect voting in the City of Lynchburg.

Sincerely,

J. Stanley Pottinger  
Assistant Attorney General  
Civil Rights Division