



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 7, 1988

James M. Pates, Esq.
City Attorney
P. O. Box 7447
Fredericksburg, Virginia 22404

Dear Mr. Pates:

This refers to Chapter 664 (1968) which eliminates two city council positions, provides that the mayor is a voting member of the city council, alters the mayor's powers and duties (including the removal of the veto authority), amends the qualifications to serve as mayor, and changes the method of filling a vacancy in the office of mayor; and the 1987 reduction in the number of councilmembers to six with three councilmembers elected at large to concurrent terms and three elected from single-member districts, the districting plan, the procedures for conducting the May 10, 1988, special election, the three polling place changes, and the realignment of voting precincts in the City of Fredericksburg, Virginia, 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 of the 1987 changes on February 16, 1988. On March 3, 1988, we received your related submission of Chapter 664 (1968) which was further supplemented on March 4, 1988. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.34).

We have considered carefully the information you provided, as well as comments and information provided by other interested parties. The Attorney General does not interpose any objections to the changes occasioned by Chapter 664. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See also 28 C.F.R. 51.41 and 51.43.

With respect to the 1987 changes (involving the further reduction in the number of councilmembers and the proposed 3-3 method of election and districting plan for implementing that reduction) we have come to a different conclusion. There appears to be no racial animus implicated in those changes and we perceive nothing in the reduction in the size of the council which per se offends the Voting Rights Act. Even so, in making a reduction of this sort, it is incumbent upon the city to assure that any loss of voting opportunities previously available to black citizens is adequately offset by the method of election to be utilized in selecting the new council. This the 3-3 plan of election does not do.

Under the 3-3 election system, the opportunity for black voters to elect a representative of their choice to an at-large position through the use of single-shot voting would be severely limited because of the reduced number of seats to be filled at large. Similarly, minorities would appear to have even less opportunity than before to meaningfully participate in the election of a representative from one of the three single-member districts as they are currently drawn. Thus, the 3-3 election system in this instance would, in our view, "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

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 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 that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1987 reduction in the size of the city council in the context of the 3-3 method of election adopted for electing the council as so reduced. It should be noted, however, that nothing contained in the objection interposed today should be taken as precluding the reduction in council size should that reduction be accompanied by a method of election that allows black citizens an equal opportunity to participate in the political process and elect candidates of their choice to office on the reduced council.

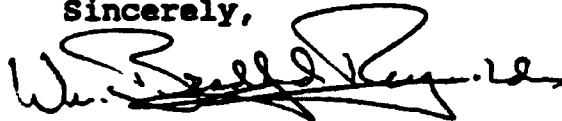
Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account 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 effect of the objection by the Attorney General is to make the 1987 reduction in the size of the city council, in the context of the proposed 3-3 system, legally unenforceable. 28 C.F.R. 51.10.

The Attorney General will make no determination regarding the May 10, 1988, special election procedures (which would implement the reduction and change in election method), the realignment of voting precincts, and the polling place changes. The special election and precinct realignment are dependent upon the changes to which an objection has been here interposed, and you have requested withdrawal of the polling place changes. See also 28 C.F.R. 51.25 and 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 Fredericksburg plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division