U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 16, 2003

The Honorable H. Bruce Buckheister
Mayor
P.O. Box 399
North, South Carolina 29112

Dear Mayor Buckheister:

I am writing in regards to the two annexations (Ordinance Nos. 2002-07-12 and 2002-08-09) to the Town of North in Orangeburg County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. The Civil Rights Division received your responses to our February 21, 2003, request for additional information through July 18, 2003.

We have carefully considered the information you have provided, as well as information in our files, census data, and information and comments from other interested persons. In light of the considerations discussed below, I cannot conclude that your burden under Section 5 of the Voting Rights Act has been sustained in this instance. Accordingly, on behalf of the Attorney General, I am compelled to object to the annexations.

Regrettably, the town's failure to respond completely to our February 21, 2003, written request for additional information, as well as our followup request, has hampered our review of your submission. The purpose of these requests is to identify the information necessary to assist the Department in its analysis of whether a covered jurisdiction has met its burden of proof under Section 5. You have neither provided these items of information, which are routinely provided in submissions and should be readily available to you, nor indicated that they are not available. In addition, some current and former town officials have declined to speak with us during the course of our review. As a result, we have been forced to analyze your submission based on the information that you did make available and the information we were able to gather on our own.

The submitted annexations are residential and will result in the addition of two white persons of voting age to the town. Our investigation has revealed that part of the reason these residents wanted to annex into town was so they could vote in town elections. Our investigation also obtained information that indicates that the Town of North has been racially selective in its response to both formal and informal annexation requests.

The test for determining whether or not a jurisdiction made racially selective annexations is whether the annexation policies and standards applied to white areas are different than those applied to minority areas. If the standards are not the same or have been applied inconsistently, there is a strong likelihood that the decision not to annex the minority area had a discriminatory purpose. City of Pleasant Grove v. United States, 479 U.S. 462 (1987); Perkins v. Matthews, 400 U.S. 379, 388 (1971). See also Reno v. Bossier Parish School Board, 528 U.S. 320, 339-41 (2000).

The evidence gathered during our review indicates that white petitioners have no difficulty in annexing their property to the town. In fact, they receive help and assistance from town officials. In contrast, there is evidence suggesting that town officials provide little, if any, information or assistance to black petitioners and often fail to respond to their requests, whether formal or informal, with the result that annexation efforts of black persons fail.

The town has made no effort to rebut this evidence nor has it articulated any explanation for failing to provide the same treatment to black and white persons who make formal and informal annexation requests. The town contends it has no formal record of annexation requests made by black persons. However, the credible evidence that we obtained during our investigation revealed the existence of at least one petition for annexation by black persons in the past. That petition was submitted to the town in the early 1990s and included a large number of black persons seeking annexation who reside to the southeast of the town's current boundary. Further, it appears that the granting of this one petition would have resulted in black persons becoming a majority of the town's population. The town has offered no reason why this annexation petition and possibly other requests brought by minorities would be denied or ignored.

Nor has the town provided equal access to the annexation process for white and black persons. The evidence we have gathered suggests that the town has not disseminated information on the annexation process to black persons and has not established a procedure by which black applicants can learn the status of their annexation request. As it appears that

annexation petitions brought by minorities have been denied while those brought by white persons have been accepted, in the absence of clearly defined procedures, race appears to be an overriding factor in how the town responds to annexation requests.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52). The town has failed to carry its burden of proof under Section 5 of showing that it has not engaged in a racially selective annexation policy. Therefore, on behalf of the Attorney General, I must object to the submitted annexations.

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 neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the annexations continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of North plans to take concerning this matter. If you have any questions, you should call Mr. Mike Pitts (202-514-8201), an attorney in the Voting Section.

Sincerely,

R. Alexander Acosta
Assistant Attorney General