U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

December 9, 2002

Mr. C. Samuel Bennett II
City Manager
P.O. Drawer 748
Clinton, South Carolina 29325

Dear Mr. Bennett:

This refers to four annexations (adopted on September 20, 1993, June 5 and August 7, 1995, and December 3, 2001), and their designation to Ward 1 of the City of Clinton in Laurens County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our July 29, 2002, request for additional information through October 31, 2002. We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the city's previous submissions.

The Attorney General does not interpose any objection to the annexations themselves; however, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection to these changes comes to our attention during the remainder of the sixty-day review period. See 28 C.F.R. 51.41 and 51.43.

As discussed further below, however, I cannot conclude that the city's burden under Section 5 has been sustained with respect to the designation of the annexations to Ward 1 of the city. Therefore, on behalf of the Attorney General, I must object to the designation of the annexations.

Under Section 5, 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); see also the Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52.

According to the 2000 Census, the City of Clinton had a total population of 8,091, of whom 3,074 (38.0%) are black persons. We understand the city has challenged the official counts for the 2000 Census, including those for the Lydia Mills annexation that indicate 584 persons, of whom 144 (24.7%) are black, reside in that area. Rather, the city contends that the area contains approximately 700 persons, of whom 30 percent are black. However, the difference in the statistical effect of the annexations caused by the use of one set of data or the other is relatively negligible. Using census data, the annexations result in a drop in the city-wide black population percentage to 37.1 percent. Using the city's estimates, the drop is slightly less, down to 37.4 percent. The slight difference caused by the use of one set of data or the other is also true with respect to Ward 1. Using the census data, the minority population percentage decreases 9.3 percentage points from 59.3 percent to 50.0 percent. Using the city's estimate, it decreases 9.0 percentage points from 59.3 percent to 50.3 percent. Moreover, regardless of which data are used, the result of the proposed designation of the annexations to Ward 1 results in lowering the black voting age population in the ward to less than 50 percent.

The city is governed by a six-member council and a mayor, who votes on all matters brought before the council. The councilmembers are elected from wards to serve four-year, staggered terms, while the mayor is elected at large. Our analysis of local election returns, including county and municipal elections conducted between 1992 and 2000, confirms the presence of racial bloc voting in the City of Clinton, such that there are three wards (Wards 1, 2, and 3) in which black residents currently have the ability to elect a candidate of choice.

The effect of the designation of the annexations to Ward 1 significantly reduces the level of black voting strength in that district, and according to our election analysis, eliminates the ability that black voters currently have to elect their candidate of choice in the district. Concomitantly, the elimination of Ward 1 as a district in which black voters can elect a candidate of choice reduces the level of minority voting strength in the expanded city from three out of seven (42.9 percent) to two out of seven (28.6 percent), while their relative share of the city-wide electorate drops no more than a percentage point to not less than 37 percent.

Before we reached our final determination in this matter, we sought to ascertain whether the elimination of the district as one in which black voters could elect a candidate of choice, and the resulting inability of the electoral system in the expanded city boundaries to reflect minority voting strength, was unavoidable. As part of that analysis, we prepared an illustrative limited redistricting plan that affects only Wards 1 and 2. Our conclusion is that the failure to provide a fair recognition of minority voting strength in the expanded city is avoidable, through either a city-wide or a limited redistricting. We recognize that the city is aware that such redistricting is feasible, and has indicated it expects to redistrict in this manner in the future, but has chosen not to do so at this time.

Where annexations significantly decrease minority voting strength, the reasons for the annexations must be objectively verifiable and legitimate, and the post-annexation election system must fairly reflect the voting strength of the minority community in the expanded electorate. City of Richmond v. United States, 422 U.S. 358 at 371-773 (1975). See also, City of Pleasant Grove v. United States, 479 U.S. 462 (1987); City of Port Arthur v. United States, 459 U.S. 159 (1982).

Here, the reasons for the annexations themselves are objectively verifiable and appear to be legitimate. However, the designation of the annexations to Ward 1 is likely to result in the elimination of representation for a minority community which the submitted data suggest comprise 37 percent of the expanded city, an elimination that was avoidable. Thus, the city has not carried its burden of showing that the post-annexation system will fairly reflect the post-annexation strength of the minority community.

We recognize that there may be some practical reasons for the city wanting to defer its post-2000 redistricting until after its dispute with the Census Bureau concerning the 2000 Census counts is resolved. We believe, and have so indicated to city officials, that under these circumstances, it may be appropriate for the city to withdraw the instant submission until such time as it can devise and present for review a complete redistricting plan with "final" census numbers. Similarly, we have also indicated that a limited redistricting of only Wards 1 and 2, in which the Lydia Mills area is divided between those two wards would allow the city to meet its burden in this instance. However, the city has chosen to continue to seek Section 5 review at this time.

This course of action also raises a concern that, by obtaining preclearance of the designation of these annexations to Ward 1 at this time, the city establishes a benchmark plan of only two viable districts for minority voters against which any future redistricting plan would be measured. Although the city asserts that the annexations will not affect its goal of maintaining three districts with majority black populations when it does decide to redistrict, the city, under a non-retrogression standard, is free to devise a plan that does nothing more than replicate the plan that would be in effect following the annexations: three districts with a majority black total population, but only two in which black voters can elect a candidate of choice.

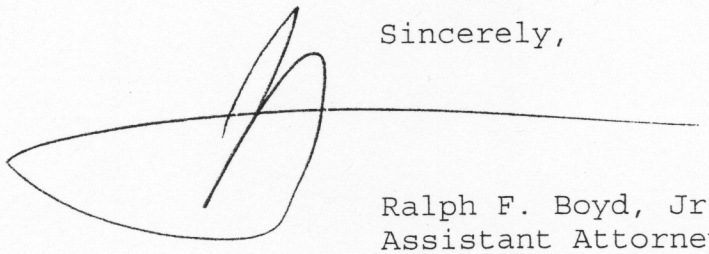
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the designation of the annexations to Ward 1.

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, 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 designation of the annexations adopted on September 20, 1993, June 5 and August 7, 1995, and December 3, 2001, to Council Ward 1 continue to be legally unenforceable insofar as they affect voting. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10. Therefore, while residents of the annexed areas may vote for the at-large mayoral position when the election is rescheduled, they may not vote in a city council race until such time as the annexations have been redesignated and the designations precleared under Section 5.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Clinton plans to take concerning this matter. If you have any questions, you should call Mr. Robert P. Lowell (202-514-3539), an attorney

in the Voting Section. Refer to File Nos. 2001-1512 and 2002-2706 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,



Ralph F. Boyd, Jr.
Assistant Attorney General