

**U.S. Department of Justice****Civil Rights Division**

*Office of the Assistant Attorney General**Washington, D.C. 20530***June 25, 2007**

Michael Crowell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, North Carolina 27602-1151

Dear Mr. Crowell:

This refers to the change in method of election from nine single-member districts to six single-member districts, with three other positions filled by the top three vote recipients in an at-large election, and the resulting 2007 City Council redistricting plan, for the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on April 26, 2007; supplemental information was received through June 22, 2007.

Under Section 5 of the Voting Rights Act, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed change "neither has the purpose nor will have the effect" of denying or abridging the right to vote on account of race. *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. "A change affecting voting is considered to have a discriminatory effect under Section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (*i.e.*, will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively." 28 C.F.R. 51.54(a) (citing *Beer v. United States*, 425 U.S. 130, 140-42 (1976)); *Reno v. Bossier Parish School Board*, 528 U.S. 320, 340, 328 (2000). The Act as amended also requires an objection if the proposed change was motivated by any discriminatory purpose.

We have carefully considered the information you have provided, as well as census data, comments, and information from other interested parties. As discussed below, I cannot conclude that the City has sustained its burden of proof under Section 5. Therefore, on behalf of the

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Attorney General, I must object to the change in method of election from nine single-member districts to six single-member districts with three at-large positions, and the resulting 2007 City Council redistricting plan.

According to the 2000 Census, the City had 121,015 residents, of whom 51,288 (42.4%) were African American, 6,862 (5.7%) were Hispanic, 3,057 (2.5%) were Asian, and 1,545 (1.3%) were Native American. According to May 2007 voter registration data, at the present time, African American voters comprise 43.6 percent of the Fayetteville electorate. The City currently elects its council from nine single-member districts. African American citizens comprise between 59.2 and 65.0 percent of the registered voters in four of the nine districts. Under the proposed plan, three out of six districts would have African American voter registration majorities of between 55.7 and 56.4 percent, and all city voters would participate in the selection of three council members. If more than six candidates qualified for these seats, an initial or primary election would narrow the field to six candidates.

Under the existing system, African American voters have elected candidates of their choice to four of the nine positions on the council in all instances. There has been no suggestion, and no evidence, that African American voters may lose their firm control of those positions in the future.

In contrast, under the proposed plan, African American voters would have substantially less than certain prospects of electing candidates of their choice to four of the nine positions. The City's submission itself acknowledges that African American voters would have to depend on the uncertain prospect of winning one at-large seat in order to elect candidates of their choice to four positions:

If those districts allow black voters to elect three of the six council members and African Americans also are able to elect at least one of the three council seats, then black voters still would have the ability to elect four of the nine council members.

Submission, at 4. To support the prospect of African American success in one at-large position, the City references the prospect of single-shot voting, in which a large preponderance of African American voters would select only one candidate, and a large preponderance of white votes would spread their votes relatively evenly among two or more different candidates. In making this argument, the City relies on estimations rather than detailed election data analysis.

We have analyzed the election data in detail, and have received other analyses from interested persons. As you acknowledge, elections in the City are racially polarized. African American candidates have had, at best, mixed success in multi-seat and other at-large contests. We previously interposed an objection in an April 9, 1985 letter to the City. When the City used a system of six districts and three at-large seats from 1986 through 1997, African American voters had no success in electing candidates of their choice to at-large positions. During that period, all African American candidates lost elections for at-large positions. Only in 1999, on the eve of the change to nine single-member districts, did the first African American candidate win an at-large position on the council. African American voters have succeeded in

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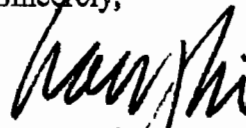
subsequent exogenous at-large contests, including Mr. Marshall Pitts' two successful elections as Mayor. Mr. Pitts, however, lost a mayoral election amid racially polarized voting in his most recent race in 2005, and all five African American candidates have been defeated within the City's precincts in at-large elections for the Cumberland County School Board.

After comparing the extremely mixed record of success of African American voters in at-large contests with their uniform success in single-member district contests, I cannot conclude, as I must under Section 5, that the City has met its burden of establishing the absence of a retrogressive effect. Accordingly, I must interpose an objection to the proposed change in method of election for the Fayetteville City Council from nine single-member districts to six single-member districts with three at-large positions, and the resulting 2007 City Council redistricting plan.

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 change neither has 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 submitted change continues 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 City of Fayetteville plans to take concerning this matter. If you have any questions, you should call Mr. Robert Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,



Wan J. Kim
Assistant Attorney General