

STAINBACK, SATTERWHITE, BURNETTE & ZOLLIFFER, PLLC

Attorneys at Law

115 NORTH GARNETT STREET

P.O. BOX 1820

HENDERSON, NORTH CAROLINA 27536

PAUL J. STAINBACK
MICHAEL E. SATTERWHITE
CAROLINE S. BURNETTE
JOHN H. ZOLLIFFER, JR.

TELEPHONE
(252) 438-4136
TELECOPIER
(252) 438-6044

April 15, 2011

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
1800 G Street NW
Washington, DC 20006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Submissions under Section 5, Voting Rights Act
City of Henderson, North Carolina Election Change (Delay)

Gentlemen:

Pursuant to Section 5 of the Voting Rights Act of 1965, as amended, the City of Henderson (located in Vance County, North Carolina) hereby submits, in duplicate, the following change affecting voting (within the definitions of the Act):

Postponement of 2011 Municipal Elections (for approximately 7 months) pursuant to the North Carolina General Statutes (due to a delay in the receipt of the 2010 block-by-block census information in the usable form needed for any redistricting required).

Our municipal population had been officially estimated at 16,409 in August, 2010; however, the July 1, 2009 preliminary census indicated a partial and preliminary count of only 15,777 (not broken down by voting wards and not to be used "for official purposes", including redistricting). The 2010 block-by-block counts needed for redistricting is not expected to be received in usable form until later this year - too late for any redistricting relative to our 2011 municipal elections, the filing period for which is to commence in July, 2011. The proposed resolution would delay the 2011 municipal elections for approximately 7 months (so that the newly elected officials would be sworn in in July, 2012 rather than in December, 2011, as presently provided for in our "non partisan election and runoff"). This additional time would allow the City to receive and place in useable form and review the block-by-block 2010 census figures and redistrict as necessary (after submitting the proposed redistricting plan to you).

As background information (although actually immaterial to this submission), for at least 25 years prior to 1983, the City of Henderson had as its elected officials a mayor and 8 aldermen (or councilmen), all of whom were elected at large by the qualified voters of the entire City, but with the aldermen having residency requirements -- two aldermen living geographically within each of the City's four wards.

Thirty years ago, only one of the four wards was predominantly African-American, while a second was predominately white and the other two were relatively equal. Approximately 30 years ago (even though a few African Americans had been previously elected "at large"), African-American leaders and organizations felt that there might be a better opportunity for African-Americans to be elected to the City Council by modifying the mode of election from an at large system to a hybrid system in which one-half of the Councilmen were elected at large (having residency requirements) with the other one-half being elected by the voters of the respective ward in which they reside and therefore these organizations requested the City Council to thus modify its mode of election. In response to this request from African-Americans, the City Council passed an Ordinance providing for this change in the mode of election effective March 1, 1983 (after submission of the same to you and your department found no objections). Since 1983, the percentage of African-American population of the City has increased.

It is perhaps significant to note that in the "at large" Council elections in the last ten years (in which all City residents could vote), there have been eight "head to head" races between whites and African-Americans in which six have been won by African Americans and two races won by whites.

The City Council consists of 8 members. The present four African-American Council members (James C. Kearney, Sr., Brenda Peace, George Day and Lonnie Davis) all, of course, regularly attend City Council meetings and hearings and participate fully in the conduct of the City business, including all of them supporting the Resolution submitted herein, which had no dissenting votes. No minority opposition was ever indicated (at any of the public hearings, at any meeting, or in any public forum or letter to the newspaper) to the Resolution delaying the Municipal election. (James C. Kearney, Sr., an African-American, was recently appointed by the other Council persons, pursuant to the General Statutes, to fill the vacancy created by the death of Councilperson, Mary Emma Evans).

Elections have never been partisan (no political parties are involved) and any qualified voter of the City of Henderson is eligible to file as a candidate for election to any office, subject to the residency requirements above. City officials are elected biennially for staggered 4-year terms.

As part of all of our past submissions to you by the City, we forwarded you the certified election returns (by wards) relative to all elections held in the City of Henderson since 1980, indicating thereon which candidates were minority candidates. We are re-submitting those to you

herewith; we are also including certified municipal elections returns relative to all municipal elections held since our last submission, so you now have certified returns for the last 30 years.

Below is a chart indicating the City's last estimated population (broken down by race, using adjusted 2000 U.S. Census data aforesaid) by wards:

EXISTING WARDS

WARD I (1)

White-	596	14.7%
African American-	3,339	82.1%
Other-	<u>131</u>	<u>3.2%</u>
	4,066	100.0%

WARD II (2)

White-	3,149	76.7%
African-American-	832	20.3%
Other-	<u>122</u>	<u>3.0%</u>
	4,103	100.0%

WARD III (3)

White-	1,687	40.7%
African-American	2,227	53.8%
Other-	<u>229</u>	<u>5.5%</u>
	4,143	100.0%

WARD IV (4)

White-	715	17.5%
African-American-	3,200	78.1%
Other-	<u>182</u>	<u>4.4%</u>
	4,097	100.0%

TOTALS FOR ENTIRE CITY

White-	6,147	37.5%
African-American	9,598	58.5%
Other-	<u>664</u>	<u>4.0%</u>
	16,409	100.0%

The registered voters in the City of Henderson (broken down by race and wards) as of June 30, 2010 are as follows:

WARD	BLACK	WHITE	ASIAN	AMERICAN INDIAN	OTHER	TWO OR MORE	UNDESIGNATED	TOTAL
1	1956	270	9	3	18	8	17	2281
2	931	2106	6	4	34	9	14	3104
3	1361	766	5	4	28	10	17	2191
4	<u>2024</u>	<u>216</u>	<u>3</u>	<u>7</u>	<u>29</u>	<u>13</u>	<u>15</u>	<u>2307</u>
Grand Total	6272	3348	23	18	109	40	63	9883

The only prior annexations by the City of Henderson since December 31, 1960 have been: (1) various voluntary (by petition) annexations of subdivisions or parcels of land; (2) annexation of 6 areas (which were effective on December 31, 1980); (3) annexation of 7 areas (which were effective on December 31, 1981); (4) annexation of 8 areas (which were effective on December 31, 1993); (5) annexation of an 11.37 acre tract (which was effective June 30, 1994); (6) annexation of approximately 240 acres (which was effective March 31, 1998); and (7) annexation of 74.24 acres (which was effective November 13, 2002). These prior annexations are as follows:

1. Beacon Light Good Will Apartments (annexed by voluntary petition effective November 1, 1970)
2. Patton Circle (annexed by voluntary petition effective July 1, 1971)
3. Sunnyview Road (annexed by voluntary petition effective July 1, 1971)
4. Sterling Gilliam Woods (or Landura) Apartments (annexed by voluntary petition effective November 1, 1979)
5. McDonald's Restaurant lot (annexed by voluntary petition effective November 1, 1979)
6. A small uninhabited tract near Western Avenue (needed to straighten a street) (annexed by voluntary petition effective November 1, 1979)
7. The annexation of six areas (effective December 31, 1980)
8. The annexation of seven areas (effective December 31, 1981).

9. The annexation (by voluntary petition) of three (3) small (primarily commercial) areas (effective on September 20, 1984).
10. The annexation of a commercial tract (by voluntary petition) effective October 31, 1984 (said tract needing to be within the City limits to be eligible for the construction of a "missing link" thoroughfare utilizing "small urban funds").
11. The annexation of 8 areas (3 by voluntary petition) effective December 31, 1993.
12. The annexation of a 11.37 acre portion of Wal-Mart Shopping Center (by voluntary petition) effective June 30, 1994.
13. The annexation (by voluntary petition) of 240 acres of prime commercial property (at and near an interstate interchange, in which only one resident [an African-American security officer in a commercial building] resided; no additional residents have moved into said annexed area), effective March 31, 1998.
14. The annexation (by voluntary petition) of a 40 foot wide strip of land 1,500 feet, more or less, long (with no residents) to make industries locating in an "Economic Development Area" (constituting most of southern Vance County) eligible to receive certain incentives and tax credits, effective November 23, 1999.
15. The annexation (by voluntary petition) of an 8½ acre shopping center (with no residents), effective November 23, 1999.
16. The annexation (by voluntary petition) of the 9.14 acre Foxborough Apartments on the Vicksboro Road, effective November 23, 1999 (in which 112 of the 125 residents were African-American, by actual count).
17. The annexation (by voluntary petition) of 8 acres, effective May 4, 2002.
18. The annexation of 74.24 acres (excluding portions included in #17 above and areas already within the City Limits), effective November 13, 2002.

19. The annexation (by voluntary petition) of a satellite 6.8 acre, effective May 4, 2002.
20. The annexation (by voluntary petition) of a satellite 19.03 acre site, effective January 1, 2011.

In addition to the above prior annexations, the City submitted (with each annexation) any changes required in the ward boundaries by such annexation. Moreover, the City previously submitted on April 2, 1991 (and the Justice Department approved) a resolution postponing the 1991 Municipal Elections (awaiting receipt of the 1990 block-by-block Census information to determine if any re-districting was to be required; no redistricting was subsequently required due to a lack of any population shifts between the wards, as verified by the 1990 Census), and the County Board of Elections submitted on February 11, 2010 on behalf of the City and Vance County moving the County South Henderson 1 (City Ward 3) polling place from an unsafe building (to which the Justice Department also raised no objection). Also, of course, the City submitted the March 1, 1983 "hybrid" mode of elections discussed earlier and further submitted the May 10, 2010 Ordinance amending the City Charter to provide that the Mayor and Council members shall serve staggered four year terms of office. The Department of Justice has never raised any objections to any submission by the City of Henderson.

All minority areas who have petitioned for annexation since at least December 31, 1960 have been annexed. The City is not presently aware of any other minority subdivisions or other minority areas which have requested annexation.

There has been no known African-American (or other minority race) opposition to the proposed resolutions passed relative to delaying the 2011 municipal elections. Moreover, no African-American (or other person of a minority race) spoke in opposition to this Resolution at any public hearing thereon. There was no opposition of any kind indicated in either the African-American community (or the City Council as a whole) to the Resolution.

The above clearly shows that as a result of the proposed municipal election delay (1) the racial population ratio of the City as a whole would not materially change; (2) the percentage of minority residents in the City would not be materially diminished or diluted; and (3) that the percentage of minority registered voters in the City would not be materially diminished or diluted.

Enclosed herewith are the following documents:

I.

- A. A certified copy of Resolution 11-37: "A Resolution to Delay the 2011 Municipal Elections pursuant to N.C.G.S. §160A-23.1" passed by the City Council on April 11, 2011;
- B. A copy of the North Carolina General Statutes §160A-23.1 relative to the authority of City

Councils to delay the 2011 municipal elections where necessary to change the boundary lines of districts or wards (in which governing members are elected) by reason of population changes indicated by the 2010 census;

- C. A certified copy of relevant portion of City Council minutes of meeting of February 28, 2011;
 - D. A certified copy of relevant portion of City Council minutes of meeting of March 28, 2011;
 - E. A certified copy of Resolution 11-32 passed by the City Council on March 28, 2011 calling for an advertised public hearing to be held on April 11, 2011 on the question of delaying the 2011 municipal elections;
 - F. Affidavit of Publication from the (Henderson) "Daily Dispatch" indicating that the "Notice of Public Hearing" (to be held on April 11, 2011 on the issue of delaying 2011 municipal elections) was published on March 31 and April 7, 2011;
 - G. A certified copy of the relevant portion of minutes of Henderson City Council (including public hearing on the issue of delaying the 2011 municipal elections) held on April 11, 2011;
- II. Copy of an Affidavit (signed by the Director of the Vance County Board of Elections) certifying all returns (by wards) relative to all municipal elections held in the City of Henderson between 1980 and 2001 indicating thereon (by checkmarks) which candidates were minority candidates;
- III. Copy of Affidavits signed by the Director of the Vance County Board of Elections certifying all returns (by wards) relative to all municipal elections held in the City of Henderson since 2001 indicating thereon the race of each candidate;
- IV. Copy of an e-mail from Vance County Board of Elections breaking down the number of registered voters in each ward by race as of June 30, 2010. (For your information and to better understand the Election Results submitted by the Board of Election, the Ward designations "NH" constitutes the City's Ward 1, the designations "WH1" and "WH2" constitute Ward 2, the designations "SH" and "HTOP" constitute Ward 3 of the City while the designation "EH" constitutes Ward 4 of the City. The designations shown are County Voting District designations for Vance County which over time City Voting Ward designations have overlapped by reasons of annexations, etc.); and
- V. Copies of miscellaneous articles appearing in the "Daily Dispatch" concerning the proposed delay of the 2011 municipal elections.

Department of Justice
April 15, 2011
Page 8

It is my understanding that you desire the City to provide you with the names of at least three citizens of minority races with whom you can confer relative to the proposed Resolution, it being understood that you could of course contact other persons also. The City of Henderson submits the following names for your consideration:

Mr. J. Henry Banks (who is presently a North Carolina District Court Judge and was formerly a member of the City Council)

P. O. Box 1482

Henderson, NC 27536

Telephone: (252) 492-4015

(While he rotates daily between several counties in his duty as a Judge, his judicial location can be best ascertained through the office of the Clerk of Superior Court of Vance County whose phone number is (252) 738-9000.)

His private office phone in Vance County is (252) 738-9102

Mr. Leo Kelly (who was previously a member of the City Council)

1214 Alpha Street

Henderson, NC 27536

Telephone: (252) 492-0475

Mr. W. Brownell Wright (who was previously Zoning Administrator for the City of Henderson)

126 S. Elizabeth Street

Henderson, NC 27536

Telephone: (252) 438-5791

I am not presently aware of any objection to the proposed Resolution by any minority individuals or groups.

This is to certify that there is no current litigation or any known pending litigation affecting the validity of the proposed ordinances.

This is to further certify that none of the changes herein above set forth have been enforced or administered, to allow time for its submission to the Department of Justice.

The City of Henderson has a clear record of impartial and unbiased annexation and voting rights. It has not been and is not now racially selective in its annexation pattern and voting record. It is respectfully submitted by the City of Henderson that the proposed Resolution delaying the 2011 municipal elections is not part of any racially selective pattern and have no discriminatory purpose or effect and that no dilution of minority voting strength has been intended or effected and that the proposed 2011 election delay should be approved.

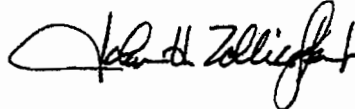
Department of Justice

April 15, 2011

Page 9

We trust the enclosed submission is in proper order. If you have any questions or need any additional information, please advise.

Respectfully submitted,



John H. Zollicoffer, Jr.,
City Attorney for the
City of Henderson, NC

JHZ.JR./kgu

Enclosures

cc: Honorable James D. O'Geary
Mayor
City of Henderson
P.O. Box 1434
Henderson, NC 27536

Mr. Ray Griffin
City Manager
City of Henderson
P.O. Box 1434
Henderson, NC 27536

Ms. Faye Gill
Director
Vance County Board of Elections
300 South Garnett Street
Henderson, NC 27536

Gary O. Bartlett, Executive Director
North Carolina State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

P.S. I am enclosing a certified copy of Resolution 11-37 delaying the Henderson City elections to the North Carolina State Board of Elections and to the Vance County Board of Elections.