

Memo

To: Richard Reade, Town Manager
From: Thomas J. Baird, Town Attorney
Date: April 15, 2025
Subject: Voting Process

At the April 2, 2025 meeting of the Town Commission, Commissioner O'Rourke requested that the Commission be presented with information regarding the voting method the Town Commission implemented to settle a lawsuit brought against the Town by the Department of Justice (DOJ).

Background

In 2009, the Department of Justice (DOJ) filed a complaint in federal court alleging that the Town of Lake Park's (Town) at-large voting method of electing Commissioners, enhanced by the use of staggered terms, resulting in black citizens of the Town having less opportunity than white citizens to participate in the political process and elect candidates of choice in violation of §2 of the Voting Rights Act of 1965 (the Act). The basis of the DOJ complaint was the extensive research of election results it conducted, supported by interviews of black citizens, some of whom had been candidates for the office of Commissioner. Included within the factual allegations of the Complaint was that in two of the Town's elections, the at-large voting system set forth in the Town Charter worked against the two black candidates. The DOJ's complaint also relied upon the fact that since the Town's incorporation in 1923 no black candidate for the Commission had ever won an election.

The then Commission recognized that a defense of the Town would be prohibitively expensive, and was unlikely to be successful. Consequently, the then Commission believed it had little choice but to settle the action on terms dictated by the DOJ. The Town retained a law firm based in Washington, DC and this firm negotiated a settlement of the action based upon the options presented to the Commission. The DOJ presented the Commission with three options: (1) Single member districts drawn such that at least three of the districts contained a majority of black population. This option would have resulted in at least two incumbent Commissioners vacating their seats on the Commission; (2) The Limited Voting System, which is the system the Town currently uses; and (3) a cumulative voting system. Although the cumulative voting system was most appealing to the Commission, the then Supervisor of Elections, Susan Bucher, rejected it claiming that her office could not implement a system just for Lake Park. Consequently, Ms. Bucher advised the DOJ that this method of voting could not be an option. The Commission selected the Limited Voting

System and voted to enter into a Consent Judgment and Decree (Consent Judgement) with the United States of America. The Consent Judgement required the Town to amend its Charter to change its at-large voting system. The Consent Judgment was executed on October 26, 2009.

Elections Under the Limited Voting System

The first election under the Limited Voting System took place in 2010. No black individuals qualified to be candidates for this election. The 2013 election was the second election using the Limited Voting System. Again, no black candidates qualified for the four commission seats. Following the 2013 election, the Commission directed me to evaluate whether the Town could return to the at-large voting method.

The 2013 Study by Dr. Engstrom

Following the 2013 election, Dr. Richard Engstrom¹ was retained to study voting data. The contract was divided into two phases. In the first phase, Dr. Engstrom assessed whether, since 2009, the data he examined would indicate that racially polarized voting still existed in the Town. If not, then he would proceed to Phase 2 of the contract. Dr. Engstrom performed a statistical analysis of elections of the Commission in 2010 and 2013; the congressional elections during that same cycle; the Florida Senate Primary between Mack Bernard and Jeff Clemons; and the Florida House Primary between Bobby Powell, Natasha Wells, Charles Bantel and Evelyn Garcia. His conclusion was that racially polarized voting still existed in the Town. Dr. Engstrom was of the opinion that if the DOJ was presented with a change it would be unlikely to support a change from the Limited Voting System because the data would show that there was still racially polarized voting in the Town. Given the results of Phase I of the Dr. Engstrom study, Phase 2 was not pursued.

The DOJ Interview

As part of the 2013, I discussed the Commission's desire with Ernest McFarland, Esquire, that was employed by the DOJ and involved in the Town's case in 2009. As part of my dialogue with Attorney McFarland, we discussed a modification to the Limited Voting System. I did not communicate the research conducted by Dr. Engstrom to Attorney McFarland. He indicated that the Consent Judgement did not prohibit the Town from changing its voting method, but *cautioned* that if the Town changed its charter and returned to the At Large Voting System, this would not preclude someone from again alleging that the at large system results in black citizens having less of an opportunity to be elected. Mr. McFarland stated that if the DOJ received a complaint it would likely investigate it. Presumably, the DOJ part would collect data² as it did prior to filing its Complaint in 2009 and determine whether the data indicated that racially polarized voting was still occurring in the Town. Mr. McFarland noted that if this was the case, the DOJ would likely bring another action against the Town. Mr. McFarland indicated that absent a complaint, the DOJ would not necessarily initiate a new study if it learned that the Town had returned to the At Large Voting System. I attempted to contact Mr. McFarland again, but his email and phone contacts I have no longer work. I have no reason to believe that Mr. McFarland's comments would be any different today to what he advised me in 2013.

¹ Dr. Engstrom has testified as an expert witness in several DOJ voting rights cases.

² Dr. Engstrom collected the same type data in his 2013 study for the Town.

The Last Four Town Commission Elections

In addition to the elections of 2010 and 2013, four other elections have been held under the Limited Voting System: 2016, 2019, 2022 and 2025. In 2016, like elections under this system in 2010 and 2013, no black candidates qualified for or were elected to the office of commissioner. But, in the elections for four commissioners in 2019 and 2022, Roger Michaud was the only black candidate to qualify for election to the seat of Commissioner. He was elected to the Commission as one of four commissioners under the Limited Voting System. In 2025, Michael Hensley and Judith Thomas were the only black candidates to qualify for the four commission seats. In a field of six seats, they both were elected as commissioners.

Conclusion

I attempted to contact Ernest McFarland at the DOJ. The email and phone number I had for him no longer work. Based upon the results of the elections in 2019, 2022, and 2025, and without analyzing the data from those elections, it might be argued that after a slow start, the Limited Voting System has produced the result that was intended, i.e. the election of black commissioners. That black candidates have been elected under the Limited Voting System, may or may not be enough to factually conclude that racially polarized voting no longer exists in the Town's elections. The only way to "conclusively" address this issue would be to retain an expert to conduct another study. With or without a study, the Commission may conclude that it is appropriate to change the Charter to another voting system. Should the Commission determine that it is appropriate to proceed with an amendment to the Charter, a referendum must be conducted. Absent a special election, the earliest scheduled municipal election is March 10, 2026.