



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

August 9, 1993

Blaise Parascandola, Esq.
Acting General Counsel
Board of Elections
Executive Office, 32 Broadway
New York, New York 10004

Dear Mr. Parascandola:

This refers to the Chinese language election procedures for the Board of Education and the City of New York in Kings and New York Counties, New York, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your most recent information concerning these submissions on June 9, 1993.

We have considered carefully the information you have provided, as well as Census data and comments and information from interested parties and other sources. Under Section 203 of the Voting Rights Act, as amended in 1992, Chinese-speaking voters in the Counties of New York, Kings and Queens are entitled to receive, in the Chinese language, all voting-connected information that is provided in English for the use of the electorate generally. New York and Kings Counties also are subject to the requirements of Section 5 of the Act. In reviewing the Board's program under Section 5, the Attorney General must examine the proposed program in light of the minority language requirements of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a(c). See Section 51.55(a).

According to the 1990 Census, in New York and Kings Counties there are about 34,000 Chinese voting age citizens who are limited-English proficient and in need of voting information in the Chinese language. The Board of Election's proposed Chinese-

language targeting program is based on the election districts to which each voter is assigned for purposes of casting a ballot. (There usually are several election districts at each polling site.) Under the targeting criteria, the Board would provide Chinese language information only for election districts with more than 200 Chinese voting age citizens who speak English "less than well," according to the Board's estimates. A total of 31 election districts at 15 polling sites meet this criterion. The problem is that this system would reach only 50 percent of the Chinese-speaking, voting age citizens of Kings and New York Counties who need such assistance.

Indeed, in Kings County, the Board targets fewer than five percent of the persons who need Chinese language assistance. This is particularly significant because, according to the 1990 Census, there has been a 61 percent Chinese population growth in Kings County since 1980 and it appears clear that areas continue to emerge with very real language needs. The proposed procedures thus ignore the Chinese-language needs of a significant number of voters at untargeted election districts. For example, according to the Board's estimated population figures at one polling site, B0288, some 791 Chinese citizens who need voting information in the Chinese language would not receive Chinese language materials apparently because their election districts would not meet the 200 voter threshold, although a neighboring election district at the same site would have such information. The targeting formula also ignores comparably large numbers of Chinese-speaking citizens in uncovered polling sites. For example, in site B0262 a total of 823 citizens who need such assistance would receive no materials or translators.

Beyond targeting, under the submitted program there are no procedural safeguards for assuring accurate and complete translations. For instance, there is no schedule for seeking input from Chinese-speaking voters so as to ensure ample time for review of translations and for changes to be made. Moreover, not all of the election materials are translated. Significantly the actual ballot itself is not translated under your program. The Board has failed to articulate any legitimate reason why the voting machines cannot mechanically accommodate Chinese on the ballot.

The program also fails to take into account the different dialects of the Chinese language. There is no procedure for assessing the language abilities of the translators, nor a program to train the interpreters for their translation responsibilities. The Board's program fails to provide a method for ascertaining which Chinese dialect is commonly used in a specific area in order to provide appropriate oral assistance.

The program has no provision to ascertain if there are sufficient numbers of bilingual translators to provide effective assistance at all the polling sites where there are voters who need such assistance. Under the submitted program, one interpreter is assigned to each targeted polling site regardless of the total number of potential voters who need such assistance at the site. Based upon the Board's calculations, the population in need of assistance in the Chinese language at the 15 targeted polling sites ranges from 261 to 2,629. Chinese-speaking voters clearly cannot be provided effective oral assistance where only one interpreter will be assigned to a polling site with numerous election districts and a large pool of potential Chinese-speaking voters.

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); City of Rome v. United States, 446 U.S. 156, 172 (1980); Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted Chinese language program.

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. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.11 and 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed election procedures continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

In addition, while Queens County is not covered under Section 5 of the Act, it is covered under Section 203 for the Chinese language. According to the 1990 Census, in Queens County nearly 20,000 voting age Chinese-speaking citizens are limited-English proficient and in need of voting information in the Chinese language. The deficiencies noted above in your Chinese language election procedures for Kings and New York Counties apply with equal force in Queens County. Indeed, your targeting formula apparently would not reach even one election district in Queens. The proposed plan clearly falls short of the requirements of the Voting Rights Act with respect to voters in Queens, as well.

To enable us to meet our responsibility to enforce the Voting Rights Act, and in light of the impending municipal primary election, please inform us within ten days of receipt of this letter of the action the Board of Elections plans to take concerning this matter. If you have any questions, you should call Loretta King (202-514-9654), Deputy Chief, Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division