



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

May 13, 1994

Kathy King, Esq.  
General Counsel  
Board of Elections  
Executive Office, 32 Broadway  
New York, New York 10004

Dear Ms. King:

This refers to the machine ballot translation portion of the Chinese-language election procedures for Kings and New York Counties in New York City, 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 response to our December 28, 1993, request for additional information on March 14, 1994. The March 14 response also modifies the machine ballot translation portion of your initial submission.

We have considered carefully the information you have provided, as well as comments and information from interested parties and other sources. Under Section 203 of the Voting Rights Act, as amended in 1992, 42 U.S.C. 1973aa-1a, 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 City's program under Section 5, the Attorney General must examine the proposed program in light of the minority language requirements of Section 203. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.55(a)).

The Board of Elections proposes to translate into Chinese only portions of the ballot on voting machines, including political parties, offices, ballot proposals as space permits, instructions for using the voting machine in primary elections, and captions that read "All Voting Instructions" and "Vote for One." The Board proposes not to translate names of candidates under any circumstances even where space on the ballot is available and also proposes not to translate instructions for use of the voting machine in general elections. The Board argues that its provision of sample ballots, which are translated into Chinese, is an adequate substitute for a complete translation of the machine ballot.

Our analysis shows that a candidate's name is one of the most important items of information sought by a voter before casting his or her ballot for a particular candidate. This applies especially in primary elections when the political party and office do not guide voters to a particular candidate. For voters who need Chinese-language materials, the translation of candidates' names is important because Roman characters are completely different from Chinese characters. Consequently, it would be extremely difficult, if not impossible, for these voters to understand names written in English.

Past elections have revealed significant problems associated with the use of sample ballots. For example, during the November 2, 1993, general election, several translations on the sample ballot were completely different from the English version on the machine. In primary elections, the state requires that the order of candidates be staggered on the machine ballots, so that the order of candidates will vary from machine to machine. In the 1993 primary election, however, the order of candidates on the sample ballots frequently did not coincide with the order on the machines. Under these circumstances, the Board's sample ballot program is not an adequate substitute for complete translations of the actual ballot.

In this regard, the Board has suggested that space limitations create certain difficulties in terms of providing translations of names into Chinese characters in certain elections. A number of alternatives appear to exist under state law and within the Board's own practice (e.g., the use of "pasters" or the targeting of certain election districts for Chinese-language machine ballots) which would permit the translation of names into Chinese. We have been given no convincing reason why at least one of these alternatives has not been considered and adopted.

The Board has stated that it will not translate candidates' names even when the ballot clearly can accommodate such translations because it does not want to create voter confusion by having complete translations in some elections but not in all elections. Any confusion that might result from such inconsistency does not justify the failure to translate names entirely. The Board also has stated that it cannot place translated names on the ballot due to the errors that might occur during the translation process given the severe time constraints under which ballots must be prepared. However, given the fact that the translations of the names of candidates are already made for other purposes, e.g., the sample ballot and the voter information guide, this reason is not persuasive.

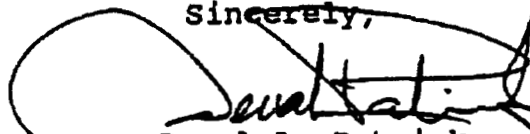
Our past experience in monitoring elections in New York City also reveals that it is important for the Board to translate into Chinese the instructions for operating machines, since many Chinese-speaking voters have encountered difficulties as a direct result of the Board's failure to translate these instructions. We understand that during general elections, voting machine instructions appear inside the booth on stickers. The Board has provided no reason why comparable Chinese-language stickers cannot be placed inside the voting machines.

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 machine ballot translation portion of the Chinese-language election procedures for Kings and New York Counties in New York City, New York.

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 has 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 machine ballot translation portion of the Chinese-language election procedures for Kings and New York Counties in New York City, New York, continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us 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,

A handwritten signature in black ink, appearing to read "Deval L. Patrick", written over a large, loopy flourish that starts on the left and loops back towards the center.

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division