APR 2 1976

Mr. James M. Parker
City Attorney
City of San Antonio
Post Office Box 9066
San Antonio, Texas 78285

Dear Mr. Parker:

This is in reference to the November, 1974, City Charter Amendments, changes in City designated polling places, and 23 annexations to the City of San Antonio, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 2, 1976.

The Attorney General does not interpose any objections to the polling place changes or the City Charter Amendments. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of these changes.

In examining the annexations submitted under Section 5 of the Voting Rights Act, it is incumbent for the Attorney General to determine whether the annexations, either in purpose or effect, result in voting discrimination against racial or language minorities. Our proper concern is not with the validity of the annexations as such but with the changes in voting which proceed from them.

With respect to San Antonio specifically, we note that the population of the City prior to the annexations here under submission, in November, 1972, was 53.1% Mexican-American, 38% white-Anglo, and 8.8% black and other races. The City's nine-member governing council is elected at-large, with numbered posts and a majority requirement. In November of 1974, a proposition to amend the City Charter to provide for a system of ward representation was defeated by the City electorate. However, our examination of election results by precincts indicates the proposition was favored overwhelmingly in predominantly Mexican-American and black precincts.

Facts available to us show that the annexations under submission expanded the City by 65 square miles (a 25% increase) and 51,417 persons, approximately three-fourths of whom were white-Anglo. The enlarged City is 51.1% Mexican-American, 40.4% white-Anglo, and 8.5% black and other races. Thus, after the addition of the substantial and predominantly white-Anglo population involved in several of these 23 annexations the proportional strength of Mexican-Americans necessarily has been reduced, even though Mexican-Americans still are a bare majority of the population. It is our understanding that the present City Council is composed of two Mexican-American members, one black, and six white-Anglos.

We have considered carefully all the information submitted, along with pertinent Census data and information and comments from other interested parties. On the basis of our review, the Attorney General will not object to 10 of the annexations submitted. 1/ As to

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1/Annexations nos. 224, 225, 233, 234, 235, 236, 238, 239, 240 and 242.

those our analysis shows that they involve uninhabited areas or populations the effect of which would be de minimus or not adverse to minority voting strength. However, with regard to the other 13 annexations 2/ we cannot conclude, as we must under the Voting Rights Act, that they, when coupled with an at-large, majority vote, numbered post system of City elections, in which racial-ethnic bloc voting exists, do not have the effect of abridging the right to vote of affected minorities in San Antonio. Cf. City of Richmond v. United States, 376 F. Supp. 1344 (D. D.C. 1974), 422 U.S. 358 (1965). City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972), aff'd 410 U.S. 962 (1973). Accordingly, I must, on behalf of the Attorney General, interpose an objection to those 13 annexations.

I would emphasize that this objection relates only to the voting changes occasioned by the annexations. As the Court in the Richmond and Petersburg cases, supra, have indicated, one way to remedy this situation would be to adopt a system of fairly drawn single-member wards. Should that occur the Attorney General will reconsider the matter upon receipt of that information.

Of course, as provided by Section 5, you have an alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the annexations do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or in contravention of the guarantees set forth in Section 4(f)(2) of the Voting Rights Act.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

2/Annexations nos. 220, 221, 222, 223, 226, 227, 228, 229, 230, 231, 232, 237, and 241.

DJ 166-012-3
X0567-X0588

Mr. James M. Parker
City Attorney
City of San Antonio
200 Main Plaza, Suite #103
San Antonio, Texas 78205

Dear Mr. Parker:

This is in reference to your request for reconsideration of the objection to the annexations by the City of San Antonio, Texas, interposed by the Attorney General on April 2, 1976, pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your request was received on January 17, 1977. In accordance with your request expedited consideration has been given this submission pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. Section 51.22).

In a referendum election on January 15, 1977, the electors of the City of San Antonio gave final approval to a plan for the election of members of the city council from single-member districts. Because the adoption of this plan remedies the adverse effect on minority voting strength caused by the annexations, I hereby, on behalf of the Attorney General, withdraw the objection.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Office of the Attorney General
Washington, D. C. 20530

J.J. 166-012-3
X0567-0588

July 15, 1976

Seagal V. Wheatley, Esq.
Oppenheimer, Rosenberg,
Kelleher & Wheatley
Attorneys at Law
Suite 620
711 Navarro
San Antonio, Texas 78205

Dear Mr. Wheatley:

This is in reference to the request of the City of San Antonio for reconsideration of the objections interposed on April 2, 1976, to 13 annexations, pursuant to Section 5 of the Voting Rights Act of 1965, as amended.

I have given careful and personal review to the materials provided by the city attorney and you in your letters and in our meeting with Mayor Cockrell, Congressman Krueger and others on June 22, 1976.

The Voting Rights Act, as interpreted by the Supreme Court, places on a covered jurisdiction such as San Antonio the special burden of proving that changes which affect voting do not have a discriminatory purpose or effect. I have found no basis for concluding that the annexations in question were purposefully dilutive of protected minority voting rights. However, I am not able to conclude that the annexations in question do not have the proscribed effect on the voting rights of Mexican-Americans in San Antonio. In this connection I have had to keep in mind the opinion of the Supreme Court in White v. Regester, 412 U.S.755 (1973), which left standing the 1972 three-judge District Court ruling invalidating multimember districts in Bexar County and which refers to the District Court's assessment of the various factors involved. Were this a standard constitutional challenge to the annexations, one might well reach a contrary conclusion. Because the burden of proof imposed by Congress in the Voting Rights Act

rests with the covered jurisdiction to show that there is no effect, and requires me to object in the absence of such a showing, I am obliged to continue the objections previously interposed.

In establishing a method for prompt review of voting changes by the Attorney General, the Voting Rights Act recognized that there would be disagreements with the Attorney General's view of the law and provided that a jurisdiction may test its correctness in legal proceedings. I was most impressed by Mayor Cockrell's presentation of the significance of these annexations to the City of San Antonio and would, of course, understand if the city desired to contest this determination. Should you decide not to seek such review, however, I am sure that Assistant Attorney General Pottinger and his staff will assist the city in seeking the most sensible way to formulate a transitional remedy which meets the congressional purposes.

I earnestly hope that the matter can be resolved to the mutual satisfaction of all concerned.

Sincerely,

Edward H. Levi
Attorney General