

JUN 17 1977

Mr. Wallace Shaw
City Attorney
City of Clute
P. O. Box 997
Clute, Texas 77531

Dear Mr. Shaw:

This is in reference to the change to a majority vote requirement for election to the City Council of Clute, Brazoria County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on April 18, 1977.

We have given careful consideration to the information furnished by you and information and comments from interested parties. On the basis of our analysis we are unable to conclude, as we must under the Voting Rights Act, that the imposition of a majority vote requirement will not have a discriminatory effect on the conduct of elections in the City of Clute.

Our analysis reveals that the only successful Mexican American candidate for the city council received only a plurality of the votes, that bloc voting along ethnic lines may exist, and that no minorities served as members of the Charter Review Commission, which recommended the adoption of the majority vote requirement. Under these circumstances, recent court decisions, to which we feel obligated to give great weight, indicate that a majority vote requirement in the context of at-large elections has the potential for abridging minority voting rights. See White v. Regester, 412 U.S. 755 (1973); and Zimmer v. McKeithen, 485 F. 2d 1297 (5th Cir. 1973) aff'd sub nom. East Carroll School Board v. Marshall, 424 U.S. 636 (1976).

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change will not have a discriminatory effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance.

Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the majority vote requirement for election to the City Council in the City of Clute. Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this 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, Sections 51.21, 51.23, and 51.24 of the Attorney General's Section 5 guidelines (28 C.F.R. 51.21, 51.23, and 51.24) permit reconsideration of the objection should you have new information bearing on the matter. However, until such time as the objection may be withdrawn or a judgment from the District Court of Columbia is obtained, the legal effect of the objection by the Attorney General is to make the change to the majority vote requirement legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division