MSD:BHH:rjs
DJ 166-012-3
C1424-33; C1447-48
C1490-92; C15[illegible]8-11

JUN 11 1979

Mr. Robert M. Collie, Jr.
City Attorney
City of Houston
Legal Department
Post Office Box 1562
Houston, Texas 77001

Dear Mr. Collie:

This is in reference to the annexations and disannexations by the City of Houston, 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 12, 1979. Although we have attempted to make our determination with respect to this submission on an expedited basis, we have been unable to respond until this time.

To determine that a change in the composition of a city's population resulting from annexations does not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group the Attorney General must be satisfied either that the percentage of members of a racial or language minority group in the city has not been appreciably reduced, that voting is not polarized between racial or language groups, or that, nevertheless, the city's electoral system will afford minority groups "representation reasonably equivalent to their political strength in the enlarged community. City of Richmond v. United States, 422 U.S. 358, 370 (1975).

To apply this legal standard to this submission we have carefully examined the information you have provided with respect to this submission, information provided by other interested persons, information in our files with respect to prior submissions by the City of Houston, and information in the record in Greater Houston Civic Council v. Mann, 440 F. Supp. 696 (S.D. Tex. 1977), pending on appeal, No. 77-3053 (5th Cir.).

According to the statistics you have provided, the submitted annexations have proportionally reduced the black population in the City of Houston from 25.0 percent to 24.1 percent, a reduction of 1.2 percentage points, and have reduced the Mexican American population from 14.8 percent to 13.5 percent, a reduction of 0.5 percentage points. Based on the relevant court decisions and in view of the relevant characteristics of the City of Houston, we find such reductions to be legally significant. See City of Richmond v. United States, 422 U.S. at 368-70; City of Petersburg v. United States, 354 F. Supp. 1021, 1028-29 (D.D.C. 1972), affirmed, 410 U.S. 962 (1973); City of Rome v. United States, C.A. No. 77-0797 (D.D.C. 1979), slip opinion at 63-64.

Our analysis of the statistics you have provided with respect to the voting patterns of different groups in the City of Houston and of precinct election returns for City elections reveals the frequent occurrence of polarized voting between blacks and whites and between Mexican Americans and whites. For example, in the 1977 election for the council position for majority black District D, 64.8 percent of the white voters but only 11.6 percent of the black voters voted for the white incumbent, Homer Ford, instead of for one of his three black challengers. See City of Richmond v. United States 376 F. Supp. 1344, 1345, 1356 (D.D.C. 1974), reversed on other grounds, 422 U.S. 358 (1975); City of Petersburg, 354 F. Supp. at 1025-26; City of Rome, slip opinion at 9-13, 64-66.

Although approximately two of every eight residents of the City of Houston are black, and approximately one of every eight residents is a Mexican-American, only one black, and no Mexican-American, has ever served on the eight-member City Council under the present electoral system.

Finally, a consideration of elections in the City of Houston, of the responsiveness of the City to the concerns and needs of blacks and Mexican Americans, and of the views of blacks and Mexican Americans and their representatives, leads to the conclusion that the present electoral system, under which all members of the City Council are elected in citywide elections, will not afford blacks and Mexican Americans 'representation reasonably equivalent to their political strength in the enlarged community." City of Richmond, 422 U.S. at 370. See City of Petersburg, 354 F. Supp. at 1025-27. City of Rome, slip opinion at 7-9, 64-66.

Thus none of the three conclusions that would support a determination that the annexations do not have a discriminatory effect can be reached. I am unable to conclude, therefore, as I must under the Voting Rights Act, that the submitted annexations will not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group.

Nevertheless, the two deannexations (Ordinance Nos. 78-2671 and 77-2197) and one annexation (Ordinance No. 77-2402) do not involve populated areas, and two annexations involve areas with substantial minority populations (Ordinance Nos. 77-2354 and 78-2380). With respect to the two deannexations and to these three annexations the Attorney General, accordingly, does not interpose any objection. (We feel a responsibility to point out, however, 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 such changes.)

With respect to the voting changes occasioned by the remaining fourteen annexations (Ordinance Nos. 77-1664, 77-2353, 77-2355, 77-2356, 77-2357, 78-2378, 78-2381, 78-2382, 78-2383, 78-2384, 78-2385, 78-2386, 78-2387, and 78-2388), because of the conclusion we have reached, I must, on behalf of the Attorney General, interpose an objection pursuant to Section 5.

Should the City of Houston adopt an electoral system in which blacks and Mexican Americans are afforded "representation reasonably equivalent to their political strength in the enlarged community" the Attorney General will consider withdrawal of this objection. Our analysis indicates that one such system would include the election of some members of the City Council from single-member districts, if the districts are fairly drawn and if the number of districts is sufficient to enable both blacks and Mexican Americans to elect candidates of their choice. See City of Richmond, 422 U.S. at 370-73; City of Petersburg, 354 F. Supp. at 1027, 1031; City of Rome, slip opinion at 65-70.

I wish to stress that this determination relates only to the voting changes occasioned by the annexations in question. The objection to the implementation of such changes does not affect the validity of the annexations themselves.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the changes affecting voting resulting from these annexations 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. However, until such a judgment is obtained from the District of Columbia Court, the effect of the objection by the Attorney General is to make the voting changes resulting from these annexations legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

SEP 21 1979

DSD:GWJ:DHH:mrk
DJ 166-012-3
C1424-28, 1431, 1433, 1447-48,
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C5898, C6150-53

Mr. Robert M. Collie, Jr.
City Attorney
City of Houston
Legal Department
Post Office Box 1562
Houston, Texas 77001

Dear Mr. Collie:

This is in reference to the application of Section 5 of the Voting Rights Act of 1965, as amended, to the City of Houston.

The following matters are before us:

(1) The submission pursuant to Section 5 of the plan adopted by the City of Houston for nine councilmanic districts, Ordinance No. 79-1584, as modified by Ordinance No. 79-1638. Your submission was received on September 13, 1979; the modification was received on September 19, 1979; preliminary information was received on August 20, 24, 27, and 30 and September 6, 1979, and supplementary information was received on September 14 and 19, 1979.

(2) A request that the Attorney General withdraw the objection pursuant to Section 5 interposed on June 11, 1979, to fourteen annexations to the City of Houston. Your request was received on August 21, 1979; information supplementing this request was received on August 24 and September 14, 1979.

(3) The submission pursuant to Section 5 of changes with respect to voting to be implemented in the bond election scheduled for September 25, 1979, Ordinance No. 79-1429. Your submission was received on August 24, 1979.

(4) The submission pursuant to Section 5 of polling place changes in precincts 187, 313, 476 and 494, Ordinance No. 79-1637. Your submission was received on September 19, 1979.

In approaching these matters we are mindful that the City has determined a need to have a bond election on September 25, 1979. We are also mindful of the upcoming councilmanic election and the importance to the citizens of Houston to have the electoral system to be used in that election determined well in advance of its November 6, 1979, date. For these reasons, we have expedited our consideration of these matters as you requested. We have been able to expedite to the extent that we have primarily because of our continued study of the Houston situation since the receipt on February 8, 1979, of the City's initial submission of its annexations and deannexations, our constant communication with the City and other interested parties during the preparation for and our monitoring of the process leading up to the September 12, 1979, adoption by the City Council of the districting plan, and our intensive review of the plan since its adoption.

Our analysis has involved two basic questions: whether the districting plan adopted by the City satisfies the standards of Section 5 of the Voting Rights Act and whether the expanded city council membership elected under that districting plan provides a basis for the withdrawal of the June 11, 1979 objection. During our review we have sought to follow the legal principles developed by the courts in their interpretation of Section 5. See Beer v. United States, 425 U.S. 130 (1976); City of Richmond v. United States, 422 U.S. 358 (1975). We have also conducted intensive research and obtained the views of blacks, Mexican-Americans and other interested persons residing in the City of Houston. In particular we have considered the accuracy of the statistics used by the City in the creation of the adopted plan, the proportions of the City's population that blacks and Mexican-Americans constitute, the probable composition of a district

that could be expected to afford blacks or Mexican-Americans a reasonable opportunity to elect candidates of their choice, the probable impact that black and Mexican-American voters will be able to have in the nine districts created by the City's plan and in various alternative proposals, the factors given weight by the City in the development of the adopted plan, and the probable impact that black and Mexican-American voters will be able to have on the election of at-large-elected members of the council, including the Mayor.

On the basis of this research and analysis I am persuaded that the City of Houston has satisfied its burden of proving that the adopted districting plan does not have the purpose and will not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group and that the new councilmanic electoral system (the nine-five plan) with the districts that have been created for use under this system afford blacks and Mexican-Americans a fair opportunity to obtain "representation reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, 422 U.S. at 370. Accordingly, on behalf of the Attorney General I am not interposing an objection to the districting plan and I am withdrawing the June 11, 1979, objection to the fourteen annexations to the City of Houston.

In view of the foregoing, I also do not interpose any objection to the voting changes to be implemented in the bond election scheduled for September 25, 1979, nor to the four polling place changes.

We feel a responsibility to point out, however, 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 such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine these submissions if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day periods.

I am taking the liberty of providing copies of this letter to the Court and to counsel for the private plaintiffs in Leroy v. City of Houston, C.A. Nos. 76-H-2174 and 78-H-2407 (S.D. Texas).

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc: Honorable Gabrielle K. McDonald
L.A. Greene, Jr., Esquire