JUL 18 1979

DSD:BHW:DHH:mrk
DJ 166-012-3
C1424-28, 1431, 1433, 1447-48,
1490-92, 1508-09, 5075-90

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) A request for reconsideration by the City of Houston of the June 11, 1979 objection pursuant to Section 5 to the voting changes occasioned by fourteen annexations to the City of Houston. This request, set forth in your letter of June 18, 1979, was received on June 19, 1979.

(2) A request that the Attorney General "limit [the June 11, 1979] objection, or otherwise modify, suspend, or clarify it, so that it does not extend to the enforcement of voting changes (i.e., the annexations) for the limited purposes proposed to be included on the August 11 ballot." This request, set forth in your letter of July 9, 1979, was received on that date.

(3) The submission pursuant to Section 5 of a City Charter amendment election to be conducted on August 11, 1979. This submission was received on July 9, 1979 and amended and supplemented on July 10, 13, and 17, 1979.

(4) The submission pursuant to Section 5 of the eight propositions that are to be the subject of the August 11 election. This submission was received on July 9, 1979 and amended and supplemented on July 10, 13, and 17, 1979.

To the extent possible we have, as you requested, expedited our consideration of these matters.

With respect to the reconsideration request, we have carefully considered the information and legal arguments presented in your letter, and for the reasons set out in my letter of June 11, 1979, on behalf of the Attorney General, I decline to withdraw the objection to the voting changes occasioned by the fourteen annexations.

With respect to the conduct of elections by the City of Houston while the objection remains outstanding, I should clarify the impact of our objection as it affects the referendum you propose to hold on Proposition 3. It is our view that Section 5 should not serve to prevent actions by the City that would be likely to provide a basis for curing the dilutive aspects of the annexation if those actions are taken consistent with state law and are not otherwise inconsistent with the purposes of the Voting Rights Act. Proposition 3 appears to be designed as an attempt to remedy the objection interposed on June 11, 1979, by defining a new method of election in the City as ultimately expanded, and on the basis of information presently available to us it appears that such a method of election, if adopted, may directly or indirectly lead to a withdrawal of the objection. In this light, and under the totality of the circumstances, on behalf of the Attorney General I do not object to the conduct of the August 11, 1979, referendum on Proposition 3 as proposed.

However, the same conclusion cannot be reached with respect to the nature of the referendum you propose to conduct on the remaining propositions. Those

propositions do not have the potential for remedying the objection interposed on June 11, 1979, and under the circumstances the referendum as proposed on Propositions 1, 2, 4, 5, 6, 7 and 8 would be inconsistent with the purposes of the Voting Rights Act while the June 11, 1979, objection remains outstanding. Accordingly, our objection cannot be modified or otherwise limited, suspended or clarified to allow the referendum on those propositions to proceed as proposed, and on behalf of the Attorney General I must object to the referendum as proposed on Propositions 1, 2, 4, 5, 6, 7 and 8.

With respect to the submission under Section 5 of the eight propositions themselves, review under Section 5 is only permitted when a completed enactment is submitted to the Attorney General or enactment complete in all respects except for the holding of a required referendum. 28 C.F.R. 51.7. Because of the objections interposed above to the holding of referenda on propositions 1, 2, and 4 through 8, this standard of finality is not satisfied and accordingly, on behalf of the Attorney General, I will make no determination at this time.

By the same standard, however, Proposition No. 3 is ripe for review at this time. Proposition 3 creates a new electoral system for the City Council of the City of Houston. The present system of nine Council members (including the Mayor) elected at large is replaced by a system under which nine (and once a certain population level is reached, eleven) members will be elected from single-member districts and six members (including the Mayor) will be elected at large. Although it appears that this change is of the kind that could meet the preclearance standards of Section 5, we have not yet been able to complete our review of this proposition in the time available to us so far. However, we will continue to expedite this review insofar as the circumstances allow and I will notify you of my decision on behalf of the Attorney General as soon as possible.

It is our understanding that the City Charter may be amended only once in a two-year period, and thus our review included a consideration of whether our decision to preclear only the potentially ameliorative portion of the referendum for the expanded City might affect the ability of the City to subsequently present the remaining issues to the electorate. Although it is our belief that at this time only the issue that could lead to a withdrawal of the objection can be placed before the electorate for referendum as was proposed, it is our view that if the resolution of that issue results in a withdrawal of the objection the City should not be precluded, notwithstanding the Charter provision, from subsequently presenting the remaining issues to the electorate. Thus, if the objection is withdrawn our staff is willing to support reasonable steps by the City to achieve this result, including any orders the City believes necessary to obtain in federal court.

With respect to the decision made on behalf of the Attorney General not to interpose an objection to the holding of a referendum on Proposition 3, as authorized by Section 5, the Attorney General reserves the right to reexamine this change if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day period. In addition, 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 such change.

With respect to the objections to the voting changes resulting from the fourteen annexations and to the holding of referenda on Propositions 1, 2, and 4 through 8, you have the right, as provided by Section 5, to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes do not have the purpose and will not 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, our administrative procedures, 28 C.F.R. 51.21(b) and (c), 51.23, and 51.24, permit you to request the Attorney General to reconsider these objections. However, until the objections are withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objections by the Attorney General is to make these voting changes legally unenforceable.

Because the Court in the consolidated cases of Leroy v. City of Houston and United States v. Houston, C.A. No. 76-H-2174 and 78-H-2407 (S.D. Texas), has indicated a desire to hear any motions later this week insofar as the recent submissions are involved, I would appreciate it if you will inform us immediately of the manner in which the City intends to comply with the decisions set out above. I am taking the liberty of providing copies of this letter to the Court and to counsel for the private plaintiffs.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

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

SEP 21 1979

DSD:GWJ:DHH:mrk
DJ 166-012-3
C1424-28, 1431, 1433, 1447-48,
1490-92, 1409-09, C5899,
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