23 JUL 1980

George Wikoff, Esq.
City Attorney
Post Office Box 1089
Port Arthur, Texas 77640

Dear Mr. Wikoff:

This is in reference to Ordinances Nos. 80-57, 80-59, and 80-60 (1980), which provide for a special August 9, 1980, referendum election and changes relating to that election, including five polling place changes and an extension of hours for absentee voting, for the City of Port Arthur in Jefferson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. The submitted ordinances indicate that the referendum will be conducted in the consolidated city, including the areas of Lakeview, Pear Ridge and Sabine Pass. Your submission was received on July 18, 1980. 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. 51.22), in order to reach a determination by July 24, 1980.

We have given careful consideration to your proposal to conduct the referendum in the expanded city, notwithstanding the Section 5 objection to the consolidation and annexation. As you know, it is our position that Section 5 of the Voting Rights Act requires that no elections which implement the voting changes occasioned by the consolidation with Lakeview, Pear Ridge, and Sabine Pass may be conducted by the City of Port Arthur until the objection under Section 5 is removed, except elections that are likely to provide a basis for withdrawal of the Section 5 objection to the consolidations,

i.e., elections that are calculated to lead to the adoption of a plan for electing the city governing body which shows promise of "[affording black residents] representation reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, 422 U.S. 358, 370 (1975); see also City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972), aff'd, 410 U.S. 962 (1973). This is the same principle we enunciated in the similar Houston annexation matter last summer, and in our letters of objection of December 21, 1979, and January 15, 1980, to a special referendum election in the expanded City of Port Arthur.

Pursuant to your request, we have not conducted a Section 5 review of the election plans themselves. However, we must, to some extent, consider the plans to be presented to the expanded city in order to determine whether the plans offer any promise of affording black residents representation reasonably equivalent to their political strength in the expanded city. On the basis of our past experience, it is our view that the 6-3 plan, if enacted, satisfies this test since it offers some promise of remedying the concerns which led to the objection. Thus, if this were the only election plan being presented we would interpose no objection to the conduct of the referendum in the expanded city. However, the proposed referendum also presents to the voters a 4-5 election plan. That plan, if enacted, will not "afford [black residents] representation reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, supra. Accordingly, I can perceive no basis for granting Section 5 pre-clearance to your proposal for submitting that plan to the expanded city. Thus, on behalf of the Attorney General I object to the referendum as proposed.

In interposing this objection, however, I stress that the Attorney General will grant Section 5 preclearance to any proposal for the conduct of a referendum in the expanded city so long as the election plan(s) to be presented meet the remedial test defined herein. Thus, the 6-3 plan and/or any other plan which shows promise of providing a basis for removing the objection to the consolidation, could be presented to the voters of the entire city. Should such a referendum be conducted the election plan adopted by the voters would be subject to the Voting Right Act's preclearance requirements, and would be reviewed on its merits with respect to the purpose and effect standards of Section 5.

I should reiterate that the city is not precluded from presenting the 4-5 plan or any other referendum issue to the voters of "old" Port Arthur, i.e., those persons residing within the boundaries of the city as they existed prior to the consolidations and annexation in question. The conduct of such a referendum would be subject to Section 5 preclearance only with regard to any procedural changes that are made in election practices or procedures.

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 proposed referendum has neither the purpose nor the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the instant objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the August 9, 1980, special referendum election legally unenforceable.

Since a hearing has been scheduled for July 24, 1980 in United States v. City of Port Arthur, we will notify the office of the Honorable Robert A. Parker, by telephone, of the entry of this objection and will hand-deliver a copy of this letter to the Court prior to the hearing.

We continue to look forward to a prompt resolution of the long-standing Section 5 objection to the consolidation and annexation and it is our hope that the City will promptly propose for presentation to the voters an election plan meeting the remedial standard described herein.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division