U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

12 MAR 1982

Mr. George Wikoff
City Attorney
P. O. Box 1089
Port Arthur, Texas 77640

Dear Mr. Wikoff:

This is in reference to the City of Port Arthur's submission of the proposed consolidation of Port Arthur and Griffing Park, and the submission of a proposed election plan for the enlarged area. Your submission, pursuant to Section 5 of the Voting Rights Act of 1965, was received on February 24, 1982. As you requested, we have given expedited consideration to your submission.

The City's proposed consolidation with Griffing Park is tied to its proposed 4-2-2-1 election plan for the enlarged city. As you know, that plan has already been scrutinized by the three-judge court for the District of Columbia, and that court rejected the majority-vote feature for the at-large seats. In the conduct of our preclearance functions under Section 5 of the Voting Rights Act, we traditionally have considered ourselves to be a surrogate of the district court, seeking to make the kind of decision we believe the court would make if the matter were before it. In that role, therefore, as well as in our role as a party to that lawsuit, we are bound by the district court's decision.

Your request that we preclear the 4-2-2-1 plan essentially asks us to overturn the district court's decision. This we have no authority to do. However, even if we had the authority to make such a determination, we would not be justified in doing so since, by proposing to expand Port Arthur by including overwhelmingly white Griffing Park, Port Arthur has exacerbated the factual context in which the at-large features of the 4-2-2-1 plan would operate.

In light of these circumstances, and on the basis of other information available to us, including the evidence of record and the decision of the court in Port Arthur, Texas v. United States, 517 F. Supp. 987 (D.D.C. 1981), prob. juris. noted, 50 U.S.L.W. 3586 (January 25, 1982), we are unable to conclude that the proposed voting changes are free of a racially discriminatory purpose or effect. Accordingly, on

behalf of the Attorney General, I must interpose an objection under Section 5 to Port Arthur's proposed consolidation with Griffing Park and the proposed election plan (4-2-2-1 plan) for the enlarged area, because of the fact that the proposed election plan incorporates the majority-vote requirement for the two non-mayoral at-large seats.

The City, through its counsel Mr. Welch, has also proposed that, in any event, the Attorney General might preclear the consolidation and 4-2-2-1 plan on the condition that the City is successful before the Supreme Court in overturning the decision of the three-judge court. We know of no authority for the granting of such a "conditional" preclearance, and it would appear to us that, by operation of Section 5 itself, preclearance would be final absent an objection within 60 days of the submission. See, e.g., Morris v. Gressette, 432 U.S. 491 (1977). Accordingly, such action on our part would be neither appropriate nor effective. We do note, however, that the Supreme Court's decision in the pending litigation presumably will decide whether the majority-vote feature of the at-large posts is entitled to Section 5 preclearance. Once that decision is rendered by the Court, the City will be free to resubmit the proposed consolidation with Griffing Park along with such proposed election plan for the enlarged area as may appear appropriate in the context of that decision.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment regarding this matter from the United States District Court for the District of Columbia that these changes neither have 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 from the District of Columbia Court is obtained, the effect of the objection by the Attorney General here is to make the proposed consolidation of Port Arthur and Griffing Park, as well as the proposed election plan for the enlarged city (the 4-2-2-1 plan), legally unenforceable.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division