U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

November 8, 1985

Ms. Brenda Adams
City Secretary
P. O. Box 829
El Campo, Texas 77437

Dear Ms. Adams:

This refers to the 1975 imposition of numbered positions and a majority vote requirement, and the 1985 change to the election of four councilmembers by single-member districts and three at large with a new staggering method for the City of El Campo in Wharton County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on September 9, 1985. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have considered carefully the information you have provided along with that provided by other interested parties. At the outset, we note that until 1975, the City of El Campo elected its seven councilmembers at large with a plurality vote under a staggered term system which required four members to be elected at one election and three at the next. Our analysis shows that, with approximately 39 percent of the population, the minority community in El Campo would have a realistic opportunity to elect candidates of their choice to office in each of the staggered elections. Consequently, this would provide minorities the opportunity to elect at least two of the seven councilmembers by virtue of their ability to single-shot vote under that system. However, the system instituted in 1975, with its majority vote and designated posts requirements, offers no opportunity comparable to that of the pre-1975 system.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Under Beer v. United States, 425 U.S. 130 (1976), the absence of such an effect is shown only when it is demonstrated that there has been no retrogression in the political strength that the minority group has already attained. In the context of the circumstances extant in the City of El Campo, where Hispanics have been unable to elect a representative of their choice to office, I cannot conclude, as I must under the Voting Rights Act, that the city has sustained its burden of showing that the 1975 change is void of the proscribed purpose and effect. Therefore, on behalf of the Attorney General, I must object to the election system instituted in 1975 whereby councilmembers are elected at large with numbered positions and the majority vote requirement.

With regard to the 1985 proposal for a mixed plan of elections under which four councilmembers would be elected by districts and three would be elected at large to staggered terms, we are unable, in the absence of the districting plan itself, to determine the effect of that system on the voting rights of affected minority group members. For that reason, and in view of the sixty-day period in which the Attorney General has to act, I must interpose an objection to the proposed 4-3 system of election pending the city's completion of its districting plan. Once that process has been completed and a final plan for implementing the 4-3 concept has been adopted and submitted for review, we will undertake a review of the completed 1985 revision to the city's electoral system under Section 5 of the Voting Rights Act.

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 these changes 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. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objections. However, until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objections by the Attorney General is to make the changes legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of El Campo plans to take with respect to this matter. If you have any questions, feel free to call John K. Tanner (202-724-8388), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

December 15, 1986

Richard B. Collins, Esq.
City Attorney
P. O. Box 829
El Campo, Texas 77437

Dear Mr. Collins:

This refers to your request that the Attorney General reconsider the November 8, 1985, and July 18, 1986, objections under Section 5 of the Voting Rights Act of 1965, as amended, to changes in the method of electing councilmembers, and districting plans for implementing those changes, in the City of El Campo in Wharton County, Texas. We received your initial letter on August 18, 1986; supplemental information was received on October 17, 1986.

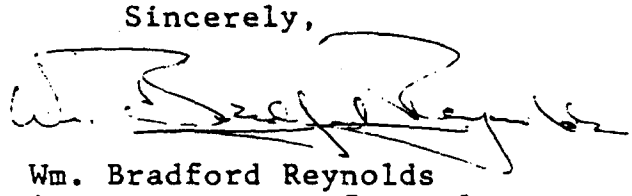
You request that we withdraw the objections to the proposed system of election which requires the election of four members from single-member districts and three members at large with a majority vote requirement for staggered (1-1-1) terms. However, because you provide no new factual or legal grounds for a change in the conclusions previously reached, we find no basis for withdrawing the Attorney General's objections. While we do note that under the existing at-large system the terms of office are staggered on a 3-2-2 basis as opposed to the 4-3 staggering which we had earlier understood to exist, it would still appear to us that the proposed system, with its majority vote requirement and 1-1-1 staggering for the at-large seats, is retrogressive for minorities who have an opportunity to win with a plurality vote in multiple seat contests under the existing system. Accordingly, on behalf of the Attorney General, I must decline to withdraw the objections.

We iterate, however, that our continuation of the objection to the 4-3 system of election should not be interpreted as indicating that the 4-3 system of election would fail the Section 5 test if, in conjunction with fairly drawn single-member districts (Alternate Plan 4 or 5), the three at-large positions were elected concurrently every two years with a plurality vote requirement.

Again we point out that Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes 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, irrespective of whether the changes previously have been submitted to the Attorney General. However, as also previously noted, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the changes in question unenforceable. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.9).

If you have any further questions regarding these matters, feel free to contact Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division