



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 20, 1989

Randall Strong, Esq.
City Attorney
P.O. Box 424
Baytown, Texas 77522

Dear Mr. Strong:

This refers to the change in the method of electing the city council from voting at large (with residency districts) to election of five members from single-member districts and four (including the mayor) at large, the districting plan, the increase in the number of councilmembers from seven to nine, the provision that the three at-large members other than the mayor will be elected from numbered positions to staggered terms, the implementation schedule, the elimination of eleven polling places, and the realignment of voting precincts for the City of Baytown in Chambers and Harris Counties, 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 March 3, 1989.

We have considered carefully the information you have provided, comments and information received from other interested parties, and the opinions of the district court and the court of appeals in Campos v. City of Baytown, Texas, C.A. No. H-85-1021 (S.D. Tex. Jan. 5 and March 25, 1987), vacated and remanded, 840 F.2d 1240, reh'g denied, 849 F.2d 943 (5th Cir. 1988).

The district court ruled, and the court of appeals affirmed, that the city's at-large method of election violates Section 2 of the Voting Rights Act. In response to these rulings, the city now proposes the mixed method of election outlined above for an expanded nine-member city council. Our analysis of the opportunity that this plan provides minority citizens to participate in the political process and elect candidates of their choice is guided by the district court's findings of fact (also affirmed by the appellate

court), including the determination that black and Hispanic city residents are politically cohesive and that white persons vote sufficiently as a bloc to defeat the minorities' preferred candidates.

It appears that the proposed plan will permit minority citizens, who constitute one-fourth of the city's population, the opportunity to elect only one of nine city councilmembers, the representative from the majority-minority single-member district. This result flows primarily from the manner in which at-large positions were included in the proposed plan: they offer minority voters no more realistic opportunity to elect a candidate of their choice than do the at-large positions in the existing system.

Although the city was required to develop a new method of electing city councilmembers to remedy the violation that adheres to the existing at-large election system, the system proposed by the city would continue to elect nearly half of the city council by the at-large method which has been found by the courts to discriminate against minority persons. We particularly note that the city chose to impose anti-single-shot provisions on the proposed at-large seats, thus eliminating the electoral opportunity minorities otherwise would have to elect a person of their choice to these seats through the technique of single-shot voting. In addition, we note that a majority vote requirement was retained for these seats though opposed by minority residents.

During the process leading to the adoption and submission of this plan for Section 5 review, the city developed several alternative plans and minority representatives also put forth several alternatives, including alternatives for single-member district plans and combinations of single-member districts with one or more at-large seats. It appears that from among these alternatives the city chose the election plan that offers minority voters the least opportunity to participate in city council elections and elect candidates of their choice.

Moreover, we have not been provided any nonracial reasons for the city's inflexible adherence to the proposed plan. We understand that the city may wish to retain some at-large representation on the city council, but this does not explain the restrictions that have been placed on voting for the at-large seats in the proposed plan. For example, the numbered positions are not now used, and a system of staggered terms for all councilmembers could be retained while providing that the terms of the councilmembers occupying the at-large seats run concurrently.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory 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. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed method of election and the districting plan. Because the precinct and polling place changes are directly related to the election method change, we will make no determination on these matters at this time.

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 will 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 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of the objection by the Attorney General is to make the proposed method of election legally unenforceable.

Since this matter is pending before the United States District Court for the Southern District of Texas in Campos v. City of Baytown, Texas, we are providing a copy of this letter to the Court.

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 Baytown plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division