



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 27, 1989

Richard D. Cullen, Esq.
Cullen, Carsner, Seerden & Cullen
P. O. Box 2938
Victoria, Texas 77902

Dear Mr. Cullen:

This refers to the 1977 charter revisions, which provide for an increase in compensation for the mayor and councilmembers; the change in the method of election from five at large, with numbered posts and majority vote, to four single-member districts and three at large, all by plurality vote for regular two-year terms; the districting plan; the increase in the number of councilmembers from five to seven; the provision that the two nonmayoral at-large members will be elected for concurrent terms; the implementation schedule, including the temporary increase in the term of mayor and a change in staggering of terms from 3-2 to 4-3; the elimination of numbered posts and the related change in ballot format; a polling place change; a precinct realignment and the establishment of an additional precinct and the polling place therefor; the candidate qualification residency requirement; and the repeal of the candidate qualification requirement in Article III, Section 3.02(a)(3) of the charter, for the City of Cuero in DeWitt County, Texas, submitted to the Attorney General on January 30, 1989, 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 August 28, 1989.

The Attorney General does not interpose any objections to the 1977 charter amendments, the polling place change, the precinct realignment, the establishment of an additional precinct and a polling place therefor, and the repeal of the candidate qualification requirement in Article III, Section 3.02(a)(3) of the city charter. However, 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 changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

cc: Public File

With regard to the remaining changes, we have considered carefully the information and materials you have supplied, along with information from other interested parties and the Bureau of the Census. At the outset, we note that even though minority residents constitute 47 percent of the city's total population, no minority member presently is among those elected to the council and at no time in the past has the city council included more than one minority member, circumstances that appear to be due largely to the combination of the existing at-large structure with a pattern of racially polarized voting in municipal elections. We further note that the process leading to adoption of the proposed changes was the result of litigation by minority citizens challenging the city's existing at-large election system under Section 2 of the Voting Rights Act and that those plaintiffs are strongly opposed to the manner in which the new council is to be elected, including the use of any at-large positions other than the mayor.

We see no basis for interposing an objection to the proposed use of two at-large seats in the new council. The features most often associated with minimizing minority representation -- numbered posts and majority vote -- have been eliminated. However, we cannot reach a similar conclusion with respect to the districts selected for the new plan. According to our information, a last minute change was made to modify the districts to place a white incumbent in one of the predominately minority districts. This change reduced the minority proportion in this district from 65.2 to 60.7 percent. The modification of districts solely to protect the interests of a white incumbent raises serious questions under the Act. See Ketchum v. Byrne, 740 F.2d 1398, 1408 (7th Cir. 1984).

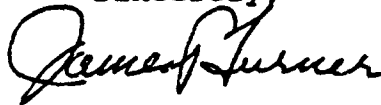
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52(c)). In satisfying its burden, the submitting authority must demonstrate that the proposed changes are not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting changes. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd 459 U.S. 1166 (1983). In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the districting plan proposed by the City of Cuero for implementing its proposed 4-2-1 election method.

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 or color. 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 judgement from the District of Columbia Court is obtained, the method of election changes and districting plan remain legally unenforceable. 28 C.F.R. 51.10.

Because the proposed implementation schedule has been established to implement the objected-to changes, the Attorney General is unable to make a determination with regard to it. See 28 C.F.R. 51.35.

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 Cuero plans to take with respect to these matters. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8290), an attorney in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division