



U.S. Department of Justice  
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Jerry W. Corbin, Esq.  
City Attorney  
P. O. Drawer 1388  
Denver City, Texas 79323

FEB 5 1990

Dear Mr. Corbin:

This refers to the adoption of numbered positions and a majority vote requirement for the city council of Denver City in Yoakum 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 December 8, 1989.

We have considered carefully the information you have provided as well as comments from other interested parties. 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 this regard, we note that it is well recognized that where a jurisdiction has a significant minority population and a pattern of polarized voting exists, the addition of numbered positions and a majority vote requirement to an at-large election system may limit the opportunity of minority citizens to elect candidates of their choice to office. See, e.g., City of Rome v. United States, 446 U.S. 156, 183-185 (1980). Both numbered positions and the majority vote requirement serve to generate head-to-head election contests and, thus, where elections are characterized by voting along racial or ethnic lines, they act, especially in combination, to preclude minority voters from utilizing the election device of single-shot voting.

Here, the city proposes to add numbered positions and a majority vote requirement to an at-large method of election under which no Hispanic ever has been elected to city office through the use of single-shot voting or otherwise. While we recognize that Hispanics appear not to have actively participated to any

significant extent in the political process in the past, we also find in the information available to us significant indications that these changes will make it unlikely that Hispanics will succeed in future elections even though they may become more active politically. This serves to deprive Hispanics of a potential they presently possess.

Under these circumstances, then, we cannot say that the city has sustained its burden of showing that the changes will not "lead to a retrogression in the position of ... minorities with respect to their effective exercise of the electoral franchise" (Beer v. United States, 425 U.S. 130, 141 (1976)) and, thus, have no discriminatory effect. Accordingly, on behalf of the Attorney General, I must object to the adoption of numbered positions and a majority vote requirement for councilmanic elections in Denver City.

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 51.45 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 submitted changes continue to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Denver City 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