



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 20, 1992

Honorable Preston Parks
Mayor
128 North Dallas Avenue
Wilmer, Texas 75172

Dear Mayor Parks:

This refers to the adoption of numbered positions for the election of councilmembers in the City of Wilmer, Dallas 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 your response to our request for additional information on May 19 and 20, 1992.

We have considered carefully the information you have provided as well as comments from other interested parties. The 1990 Census reports that Hispanics constitute 30.3 percent while blacks constitute 20.9 percent of the city's population. Review of Census data demonstrates that these figures represent significant increases in the population of each minority group in the city since 1980. The information available to us indicates that no minority person has ever served on the city council and that minority candidates who have sought city office have been unsuccessful, in large part as a result of racially polarized voting.

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 to an at-large election system with a majority vote requirement may further 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). Numbered positions serve to generate head-to-head election contests, and, thus, where elections are characterized by voting along racial or ethnic lines, they act to preclude minority voters from utilizing the election device of single-shot voting.

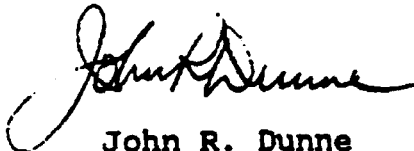
We understand that the city adopted numbered positions primarily in response to requests by some minority residents to create an opportunity for minority voters, but, based on the information available to us, it appears that the use of numbered positions will make it less likely that minority voters will be able to elect candidates of their choice to the city council. Under these circumstances, then, we cannot say that the city has demonstrated that the use of numbered positions 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).

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 city's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the use of numbered positions for city council elections.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the use of numbered positions has 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, you may 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 use of numbered positions continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Wilmer plans to take concerning this matter. If you have any questions, you should call Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

APR 6 1993

Ms. Rose Kendrick
City Secretary
128 North Dallas Avenue
Wilmer, Texas 75172

Dear Ms. Kendrick:

This refers to your request that the Attorney General reconsider the July 20, 1992, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the adoption of numbered positions for the election of councilmembers in the City of Wilmer, Dallas County, Texas. We received your request on February 12, 1993.

We have considered carefully the information you have provided. We note, however, that it does not contain any factual information that addresses or rebuts the conclusions we previously reached regarding the pattern of racially polarized voting in city elections and the potential adverse effect of this pattern on the opportunity for minority voters to elect their candidates of choice to the city council. Rather, you suggest that we are merely erroneous in our conclusions, without providing any supporting documentation or any information demonstrating that there has been "a substantial change in operative fact or relevant law." See the Procedures for the Administration of Section 5 (28 C.F.R. 51.46).

In your letter, you indicate that numbered positions may serve as the functional equivalent of single-member districts or at least permit a cohesive minority group to nominate a candidate from its area. As we previously explained, however, it is well recognized that the addition of numbered positions to an at-large election system with a majority vote requirement may further 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). Numbered positions do not serve as the functional equivalent of single-member election districts. Rather, the use of numbered positions serves to generate head-to-head election contests and to preclude minority voters from utilizing the election device of single-shot voting.

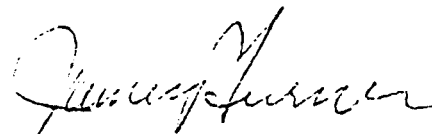
You have not provided any basis for us to alter our view that the use of numbered positions will make it less likely that minority voters will be able to elect candidates of their choice to the city council. Under these circumstances, we still are unable to say that the city has met its burden of demonstrating that the use of numbered positions 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).

In light of the considerations discussed above, I remain unable to conclude that the City of Wilmer has carried its burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the use of numbered positions for city council elections.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has 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. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Wilmer plans to take concerning this matter. If you have any questions, you should call Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division