



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

December 14, 1992

Gary W. Smith, Esq.
City Attorney
P. O. Box 779
Galveston, Texas 77553-0779

Dear Mr. Smith:

This refers to the change in the method of electing the city council from at large to four from single-member districts and two at large by numbered posts for concurrent terms; the districting plan; the elimination of the majority vote requirement for city council and mayoral elections; the shortening of mayoral and council terms from three years to two years; the change in maximum number of consecutive terms from two to three; and the implementation schedule for the City of Galveston in Galveston 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 further responses to our request for additional information on October 15 and November 10, 12 and 23, 1992; supplemental information was received on November 24, 1992.

With regard to the change to concurrent, two-year terms, the change in the limit on consecutive terms, and the elimination of the majority vote requirement, the Attorney General does not interpose any objection. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection to these changes comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

We cannot reach the same conclusion, however, concerning the change in method of election and the adoption of numbered posts for at-large positions. We have carefully considered the information you provided as well as information from other

interested parties and Census data. According to the 1990 Census, blacks constitute 28 percent and Hispanics constitute 21 percent of the total population of the City of Galveston. Under the existing at-large system, over the last twelve years, there have been a number of black or Hispanic candidates in city council and mayoral contests. Although many of these candidates were supported by their respective minority group, almost all were unsuccessful. This appears to have been the result of their failure, in general, to receive support outside their racial or ethnic group.

The city began the process that led to the proposed method of election after black plaintiffs filed suit to challenge the existing system under Section 2 of the Voting Rights Act. Arceneaux v. City of Galveston, No. G-90-221 (S.D. Tex.). The city's proposed system would have four council members elected from single-member districts, with two council members and the mayor elected at large. In choosing this system, the city rejected arguments in favor of a system preferred by the Arceneaux plaintiffs and others in the black and Hispanic communities that would have six single-member districts and a mayor elected at large.

The city has argued for preclearance of its proposed system on the ground that black voters and Hispanic voters are politically cohesive with each other and that as a result its system and the subsequently adopted districting plan would provide two districts in which minority voters would be able to elect candidates of their choice. The information provided by the city, however, does not support the claim that such political cohesion between black and Hispanic voters occurs in city elections. Under these circumstances, the city has not established that the proposed changes likely would produce the results it claims. Moreover, the city has not provided legitimate reasons for maintaining two at-large council positions (in addition to the mayor) in the face of the prevailing patterns of polarized voting.

Those same voting patterns also would appear to make it more difficult for minority voters to elect representatives of their choice to at-large council positions with the proposed adoption of numbered posts. As the city's charter review committee, itself, recognized when it considered this matter, the use of numbered posts would rule out the possibility of single-shot voting, a technique which often may be beneficial to minority voters to overcome the effects of racial bloc voting.

Under Section 5, the City of Galveston has the burden of showing that the proposed changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or membership in a language minority

group. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Accordingly, on behalf of the Attorney General, I must object to the proposed method of election with four single-member districts, two at-large seats and a mayor elected at large, as well as the adoption of numbered posts.

The Attorney General will make no determination regarding the districting plan because it is dependent upon the objected-to change to the 4-2-1 method of election. See 28 C.F.R. 51.22(b) and 51.35.

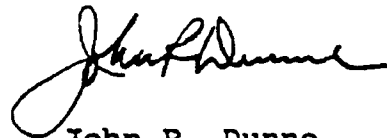
Effectuation of the proposed implementation schedule, which was to begin in May 1992, is no longer possible. Accordingly, the Attorney General will make no determination as to that schedule.

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 proposed 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, 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 proposed 4-2-1 system and the use of numbered posts continue 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 Galveston plans to take concerning these matters. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Because the current method of electing the city council is at issue in the Arceneaux litigation, we are providing a copy of this letter to the court in that case.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Hugh Gibson
United States District Judge