



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 31, 1994

The Honorable Don Tymrac  
Mayor, City of Karnes City  
Post Office Box 399  
Karnes City, Texas 78118

Dear Mayor Tymrac:

This refers to the increase in the number of officials on the municipal governing body from two to five, the procedures for conducting the August 13, 1994, special election for the three additional officials, the adoption of staggered terms and the implementation schedule for the City of Karnes City in Karnes 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 responses to our July 22, 1994, request for additional information on September 1 and October 14, 17, 20 and 25, 1994; supplemental information was received on October 27, 1994.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. At the outset, we note that the expansion of the city's governing body occasioned by the establishment of the three additional positions must be analyzed in the context of the method used to elect the governing body. City of Lockhart v. United States, 460 U.S. 125, 131-132 (1983). See also McCain v. Lybrand, 465 U.S. 236, 255 n.27 (1984). Under the existing electoral system in Karnes, two city commissioners and the mayor are elected at large to concurrent, two-year terms by plurality vote. Elections in Karnes exhibit a pattern of polarized voting, and significant disparities appear to exist in the rates at which Hispanic and Anglo residents register and vote. Moreover, the depressed political participation rates among Hispanics appear attributable largely to a history of discrimination, which continues to be reflected in the disparities in socio-economic conditions that exist between the city's Hispanic and Anglo residents. Thus, in the totality of circumstances, it appears that Hispanic residents in the city do not participate equally in the political process and have a limited opportunity to elect candidates of their choice to the city's governing body.

The city determined to eliminate the existing system and expand the size of the city's governing body. Rather than do so in a manner fair to all of the city's citizens, however, the city added positions to the at-large electoral system. Indeed, the expanded governing body will be elected with staggered terms of office (2-3), which, under the at-large system, would have the effect of limiting the effective use of single-shot voting. The city has not advanced any persuasive non-racial reasons for the use of at-large elections for the expanded governing body and there clearly were alternative methods for electing an expanded body that would not similarly submerge Hispanic voting strength. It appears, furthermore, that little or no effort was made by the city to solicit the views of the Hispanic community regarding alternative methods of electing the enlarged governing body.

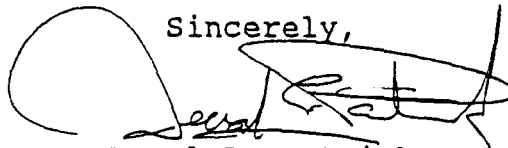
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, a submitted change may not be precleared if its implementation would lead to a clear violation of Section 2. See 28 C.F.R. 51.55(b). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance, and that the proposed expansion of the city's governing body satisfies the preclearance requirements of the Act. Therefore, on behalf of the Attorney General, I must object to the increase in the number of officials insofar as the city proposes to elect the three additional positions under an at-large election scheme with staggered terms.

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. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the increase in the number of officials from two to five continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

With regard to the procedures for conducting the August 13, 1994, special election and the implementation schedule, the Attorney General will make no determination because these matters are directly related to the objected-to increase in the number of officials on the city's governing body. See 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Karnes City plans to take concerning these matters. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval Patrick", written over a horizontal line.

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division