V6107

JSP:RS:peb
DJ 166-012-3

APR 1 1974

Mr. George D. Zuckerman
Assistant Attorney General
In Charge of Civil Rights Bureau
State of New York
Two World Trade Center
New York, New York 10047

Dear Mr. Zuckerman:

This is in reference to your submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 of Chapters 11, 76, 77, and 78, New York Laws of 1972, insofar as they relate to the Congressional, Senate and Assembly District Lines in Bronx, New York and Kings Counties. The submission was received by this Department on January 31, 1974.

We have given careful consideration to the submitted changes and the supporting information as well as data compiled by the Bureau of the Census and information and comments from interested parties. Except as noted below, the Attorney General does not object to the implementation of the submitted redistricting legislation. However, on the basis of all the available demographic facts and comments received on these submissions as well as the statute's legal burden of proving that the submitted plans have neither the purpose nor the effect of abridging the right to vote because of race or color, we have concluded that the proscribed effect may exist in parts of the plans in Kings and New York Counties.

First, with respect to the Kings County congressional redistricting, the lines defining district 12 and surrounding districts appear to have the effect of overly concentrating black neighborhoods into district 12, while simultaneously fragmenting adjoining black and Puerto Rican concentrations into the surrounding majority white districts. We have not been presented with any compelling justification for such configuration and our own analysis reveals none. Moreover, it appears that other rational and compact alternative districting could achieve population equality without such an effect.

Similarly, in the Kings County senate and assembly plans, a parallel problem exists. Senate district 18 appears to have an abnormally high minority concentration while adjoining minority neighborhoods are significantly diffused into surrounding districts. In the less populous proposed assembly districts, the minority population appears to be concentrated into districts 53, 54, 55 and 56, while minority neighborhoods adjoining these districts are diffused into a number of other districts. As with the congressional plan we know of no necessity for such configuration and believe other rational alternatives exist.

In the New York County senate plan, the lines defining district 28 in West Harlem appear to reduce significantly the minority voting strength in that area. Significant portions of minority neighborhoods in that area (district 27 under the prior plan) have been removed to proposed district 29 with apparent dilutive effect. We have been presented with no persuasive justification for this effect and reasonable alternatives appear to be available.

Finally, in the New York County assembly districting, the lines describing districts 70, 71, 72 and 74 appear to have the effect of unnecessarily diluting the voting strength of black and Puerto Rican residents. The result is that district 71 is an oddly shaped district over four miles long with a minority population of approximately 46 per cent.

On the basis of our findings, therefore, we cannot conclude, as we must under the Voting Rights Act, that these portions of these redistricting plans will not have the effect of abridging the right to vote on account of race or color. For that reason I must, on behalf of the Attorney General, interpose an objection to the implementation of the enumerated portions of the submitted plans.

We have reached this conclusion reluctantly because we fully understand the complexities facing the state in designing reapportionment plans to satisfy the needs of the state and its citizens and simultaneously, to comply with the mandate of the federal Constitution and laws. We are persuaded, however, that the Voting Rights Act compels this result.

Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that this plan neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race.

Until such a judgment is rendered by that Court, however, the legal effect of the objection of the Attorney General is to render unenforceable the specified portions of the redistricting plans.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

JSP:SMS:bhj
D.J. 166-012-3
V9109

SEP 3 1975

Mr. Stanley E. Michels
Chairman, Law Committee
Democratic Party, New York County
342 Madison Avenue
New York, New York 10017

Dear Mr. Michels:

This is in reference to your submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 of the Amendment to the Statement and Call of the County Committee of the Democratic Party, New York County, dated June 16, 1975, which Amendment effected a merger of the two district leadership areas in the Manhattan portion of the 62nd Assembly District. Your submission was received on July 5, 1975.

We have given careful consideration to the submitted change and the supporting information as well as data compiled by the Bureau of the Census and information and comments from interested parties. Our analysis reveals that there are significant concentrations of Black, Puerto Rican and Chinese people residing in the district leadership area denominated as Part A, and in areas near or contiguous to Part A. Similar concentrations are absent in many portions of Part B. We have been presented with no information, nor has any otherwise come to our attention, which would show that these minority

groups do not constitute a significant political minority whose voting strength would be minimized through their submergence into a two member district in which they constitute far less meaningful proportions.

In view of these circumstances, we cannot conclude that the New York County Democratic Committee has sustained its burden of proving that the submitted change does not have the effect of denying or abridging the right to vote on account of race or color. For that reason, I must, on behalf of the Attorney General and consistent with Section 51.19 of the administrative guidelines (28 CFR 51.19) interpose an objection to the voting change involved in the consolidation of representational parts A and B of the 62nd Assembly District.

Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that this change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race.

Finally, we note that the creation of the two district leadership areas within the Manhattan portion of the 62nd Assembly District, accomplished subsequent to the 1972 statewide reapportionment, has never met the preclearance requirements of Section 5. We suggest that you may wish to submit this prior change to the Attorney General in the near future so that all Section 5 issues relating to the leadership areas may be resolved.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

OWEN J

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

75-3285

Address Reply to the
Division Indicated
and Refer to Initials and Number

JSP:SMS:bhj
D.J. 166-012-3
V9109

SEP 4 1975

Honorable Richard Owen
United States District Court for the
Southern District of New York
Foley Square
New York, New York 10007

Re: Freed v. Feuer, et al., Civil Action
No. 1975-3285 (S.D. N.Y.)

Dear Judge Owen:

We are enclosing a copy of our response of September 3, 1975 to the submission by the Democratic Party, under Section 5 of the Voting Rights Act of 1965, of the consolidation of two district leadership areas in the Manhattan portion of the 62nd Assembly District. As the letter indicates, the Attorney General has interposed an objection to the change in question.

We originally represented to the Court when we participated as Amicus Curiae at the July 17, 1975 hearing in the above-captioned case that we expected to reach a determination on the merits of the Section 5 question no later than August 1, 1975. We apologize for not being able to meet this committment.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

By: S. Michael Scadron
S. MICHAEL SCADRON
Attorney, Voting Section

Honorable Mark White
Secretary of State
State of Texas
Capitol Station
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to S.B. 300 of 1975, voter registration procedures in the State of Texas, which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended in 1975. Your submission was received on October 31, 1975. Pursuant to your request we have given expedited consideration to this submission in accordance with Section 51.22 of our Section 5 guidelines (28 C.F.R. 51.22).

We have reviewed carefully the information, statistical data and other material submitted by you as well as information, comments and views provided by other interested persons. Except insofar as S.B. 300 requires a purge of all currently registered voters in Texas, the Attorney General does not interpose an objection to the changes involved. We feel a responsibility to point out, however, that Section 5 of the Voting Rights Act expressly provides that our failure to object does not bar any subsequent judicial action to enjoin the enforcement of these changes should such action become necessary.

Section 2 of S.B. 300 provides, among other things, that registrants who fail to reregister shall have their registration terminated on March 1, 1976. We recognize the State's interest in enacting legislation which promotes registration and, also, which utilizes a reasonable means of maintaining accurate registration records. However, our review of recent registration laws in Texas, e.g., the poll tax, annual registration, reregistration (S.B. 51 of 1971), in conjunction with our evaluation of S.B. 300, illustrates that the citizens of Texas have experienced several registration procedures within a ten-year period.

Under Section 5 of the Voting Rights Act the burden falls upon the submitting authority to demonstrate that voting changes, such as those here under submission, not only do not have a prohibited discriminatory purpose but will not have such an effect. Thus, as set forth in his Procedures For the Administration of Section 5 of the Voting Rights Act of 1965, Section 51.19 (28 C.F.R. 51.19), the Attorney General will refrain from objecting only if he is satisfied that the proposed change does not have the prohibited purpose or effect. If he is persuaded to the contrary or if he cannot satisfy himself that the change is without discriminatory purpose or effect, the guidelines state that the Attorney General will object.

Our analysis has revealed nothing to suggest a discriminatory purpose to the purge involved here. In addition, the State's proposals for minimizing the adverse effect of the reregistration are commendable. However, we cannot conclude that the effect of the total purge to initiate the reregistration program will not be discriminatory in a prohibited way.

With regard to cognizable minority groups in Texas, namely, blacks and Mexican-Americans, a study of their historical voting problems and a review of statistical data, including that relating to literacy, disclose that a total voter registration purge under existing circumstances may have a discriminatory effect on their voting rights. Comments from interested parties, as well as our own investigation, indicate that a substantial number of minority registrants may be confused, unable to comply with the statutory registration requirements of Section 2, or only able to comply with substantial difficulty. Moreover, representations have been made to this office that a requirement that everyone register anew, on the heels of registration difficulties experienced in the past, could cause significant frustration and result in creating voter apathy among minority citizens, thus, erasing the gains already accomplished in registering minority voters.

We have reviewed carefully the justifications submitted by the State in an effort to satisfy the State's burden of proof that the purge in question does not have the purpose or effect of denying or abridging voting rights on the basis of race or language minority status. We also have closely scrutinized the nature of the State's interest in implementing a statewide purge to determine whether it is compelling and whether alternative means of accomplishing its purpose are available. Dunn v. Blumstein, 405 U.S. 330 (1972). Under all the circumstances involved, we are unable to conclude that a total purge is necessary to achieve the State's purpose. Likewise, we are unable to conclude, as we must under the Voting Rights Act, that implementation

of such a purge in Texas will not have the effect of discriminating on account of race or color and language minority status. For that reason, I must, on behalf of the Attorney General, interpose an objection to the implementation of the purge requirement of Section 2 of S.B. 300.

Should you decide, however, to implement the reregistration without the purge requirement and can at a later date demonstrate that it did not have an adverse effect on minority voting rights, we would welcome a request for reconsideration with appropriate supporting materials (see 28 C.F.R. 51.23).

Of course, as provided for by Section 5, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. Should you decide to pursue such a course of action my staff and I will cooperate to expedite the matter in any way possible.

I am aware that there is now pending a lawsuit in the United States District Court for the Eastern District of Texas with respect to the subject matter of this submission. I am, therefore, taking the liberty of forwarding a copy of this letter to the Court.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

MAR 11 1976

Mr. L. Holt Magee
Attorney at Law
P. O. Box 1826
Monahans, Texas 79756

Dear Mr. Magee:

This is in reply to your letter of January 8, 1976, in which you submitted to the Attorney General the April 9, 1974 order of the Monahans City Council authorizing the use of numbered posts in city council elections pursuant to Section 5 of the Voting Rights Act of 1965. Your letter and the attached materials were received on January 12, 1976.

After a careful examination of all the available facts and circumstances and information received from interested citizens, we are unable to conclude, as we must under the Voting Rights Act, that the numbered post provision of Ordinance No. 667 (1974), in the content of at-large elections for the Monahans City Council, will not have a discriminatory effect on blacks and Mexican-Americans. Our information indicates that there are adjoining concentrations of blacks and Mexican-Americans in and around the "old town" of Monahans, and that there is a history of racial-ethnic bloc voting. Where these circumstances prevail, the combination of features such as the numbered post requirement with at-large elections tend to be dilutive and thus violative of the voting rights of minorities. White v. Regester, 412 U.S. 755 (1973).

Therefore, for the foregoing reasons, on behalf of the Attorney General I must interpose an objection to the numbered post provision of Ordinance No. 667 (1974). 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 this provision neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. However, until and unless such a judgment is obtained, the provision objected to is unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

D.J. 166-012-3
X1899-1901

MAR 29 1976

Mr. John L. Love
City Secretary
City of Luling
P. O. Box 630
Luling, Texas 78648

Dear Mr. Love:

This is in response to your letter of January 23, 1976, in which you submitted to the Attorney General three changes in voting procedures in Luling, Texas, pursuant to Section 5 of the Voting Rights Act of 1965. Your letter and the attached materials were received on January 28, 1976.

The Attorney General does not interpose any objection to the following changes:

Change from commission to aldermanic form of government adopted November 13, 1973;

Change of polling place from fire station to Luling Senior High School Library adopted February 11, 1975.

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.

With respect to the numbered post provision adopted November 12, 1974, we have considered carefully all of the information presented by you along with pertinent Census data and information and comments received from other interested parties. On the basis of our analysis we are unable to conclude, as we must under the Voting Rights Act, that the use of numbered posts, in the context of at-large elections for the Luling City Council, will not have a discriminatory effect on blacks and Mexican-Americans.

Our analysis reveals that minority groups constitute approximately 41% of the population of Luling (25% Mexican-American; 16% black). While our information is that one black has been elected to the city council under both the prior system and the numbered post system since its inception, our analysis also has revealed significant evidence that bloc voting along racial and ethnic lines exists in Luling. Under these circumstances, recent court decisions, to which we feel obligated to give great weight, suggest that the combination of such features as designated posts and at-large elections may have the effect of abridging minority voting rights. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971).

Accordingly, on behalf of the Attorney General I must interpose an objection to the numbered post feature of electing city councilpersons adopted on November 12, 1974. 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 this provision neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. However, until and unless such a judgment is obtained, the provision objected to is legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

APR 2 1976

Honorable Joseph B. Bumgardner
County Judge
County of Victoria
Victoria County Courthouse Building
Victoria, Texas 77901

Dear Judge Bumgardner:

This is in reference to the pending election pertaining to a proposed consolidation between the Victoria Independent School District and the Mission Valley Independent School District in Victoria County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on February 2, 1976.

In examining the proposed consolidation, under Section 5 of the Voting Rights Act, it is incumbent on the Attorney General to determine whether the proposed change, either in purpose or effect, may result in racial or language minority group discrimination in voting. In making this evaluation we apply the legal principles which the courts have developed in the same or analogous situations. Moreover, it is also significant that Section 5 only prohibits implementation of changes affecting voting and provides that such changes may not be enforced without receiving prior approval by the Attorney General or by the District Court for the District of Columbia. Our proper concern

then is not with the validity of the proposed consolidation but with the changes in voting which proceed from it.

After a careful examination of the submitted change, including consideration of demographic and geographic data, and comments from interested parties, we cannot conclude, as we must under the Voting Rights Act, that the proposed consolidation will not have a discriminatory effect on either the Mexican-American or black communities in the Victoria Independent School District. According to the data we examined the Mission Valley Independent School District is predominantly white (Anglo) in population with a 7% Mexican-American population and a 4% black population. The Victoria Independent School District, by contrast, contains a 36% Mexican-American population and a 9% black population. Our information regarding elections in the Victoria Independent School District demonstrates that the school district elects its board of trustees at-large to seven numbered posts, and that there is a likelihood of racial ethnic bloc voting. Moreover, the information we examined indicates that the major portion of the black and Mexican-American population is located within the City of Victoria in cognizable residential areas.

Under the procedural guidelines for the administration of Section 5 the burden of proving that changes affecting voting have not had or will not have the purpose or effect of discriminating against racial or language minority groups lies with the submitting authority. 28 C.F.R. 51.19; Georgia v. United States, 411 U.S. 526 (1973). Under the circumstances described above, commensurate with our guidelines we cannot conclude that the proposed

consolidation, in the context of an at-large, numbered post election system, will not have a dilutive effect on the voting strength of blacks and Mexican-Americans in the Victoria Independent School District. Therefore, on behalf of the Attorney General, I must interpose an objection to the consolidation of the Victoria and Mission Independent School Districts.

While we are not aware of any court decision dealing specifically with a consolidation of this type, cases dealing with annexations are particularly pertinent since the change in voting effected in both cases is the same, i.e., an alteration of a particular electorate. Supreme Court decisions which have considered the racially dilutive effect of annexations under Section 5 of the Voting Rights Act have held that such annexations can be approved only on the condition that modifications calculated to neutralize to the extent possible any adverse effect upon the minority voters are adopted, such as a shift from an at-large election system to a single member district election system. City of Richmond v. United States, 422 U.S. 358 (1975); City of Petersburg v. United States, 410 U.S. 962 (1973). In this connection, should the Victoria School District undertake to elect its board of trustees from single member districts the Attorney General will reconsider his determination in this matter. We note that it is our understanding that the establishment of single member districts in the Victoria Independent School District has been a topic of discussion in the past.

As set out in the Section 5 guidelines, 28 C.F.R. 51.23 and 51.24, we will examine any information not previously available to you in support of a request to reconsider the objection interposed above, including such information as the results of any studies or other documentation regarding the feasibility of creating single member districts in the Victoria Independent School District.

Of course, as provided by 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 consolidation has neither the purpose nor effect of denying or abridging the right to vote on account of race or color.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

JUN 1 1976

Mr. L. Holt Magee
Attorney at Law
P. O. Box 1626
Monahans, Texas 79756

Dear Mr. Magee:

This is in reply to your letter of March 17, 1976, in which you requested reconsideration by the Attorney General of his March 11, 1976, objection to Ordinance No. 667 (1974) of the City of Monahans instituting numbered posts for city council elections. Your request for reconsideration was received by this Department on March 22, 1976. We are also in receipt of election results of 1968 county commissioner elections and six affidavits which were presented to Mr. Kieckhefer at your conference with him at the Office of the United States Attorney in San Antonio on March 30, 1976.

We have carefully examined the material which you have presented and concluded that the premise upon which we based our original objection, i.e., ethnic bloc voting, does not appear to be as prevalent as we originally determined. While the evidence is not demonstrably clear one way or the other, there appear to be instances where bloc voting did not occur. Accordingly and pursuant to the reconsideration guidelines promulgated for the administration of Section 5, 28 C.F.R. 51.23 through 51.25, the objection interposed to Ordinance No. 667 (1974) in my letter of March 11, 1976, is hereby withdrawn. 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 change.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

AUG 16 1976

Honorable Joseph B. Bumgardner
County Judge
County of Victoria
Victoria County Courthouse Building
Victoria, Texas 77901

Dear Judge Bumgardner:

This is in reference to the consolidation of Victoria Independent School District and Mission Valley Independent School District in Victoria County, Texas. The additional information needed to evaluate your request for reconsideration was received July 19, 1976.

We have given careful consideration to the new information furnished by you. On the basis of our analysis of this information, we have concluded that this 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. I therefore, on behalf of the Attorney General, am withdrawing the previously interposed objection to the consolidation of Victoria and Mission Valley Independent School Districts. 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 change.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

cc: Public File
X2342

APR 11 1977

Mr. W. Z. Miller
Superintendent
Prairie Lea Independent
School District
Box 12
Prairie Lea, Texas 78661

Dear Mr. Miller:

This is in reference to the imposition of numbered place and majority vote requirements for the election of school board members of the Prairie Lea Independent School District, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on February 10, 1977.

We have given careful consideration to the information you have provided as well as to relevant demographic data and court decisions. The courts have held that, in the context of at-large elections, the imposition of numbered place and majority vote requirements can have a discriminatory effect on minority political influence. See White v. Regester, 412 U.S. 755, 766-67 (1973), and Zimmer v. McKeithen, 485 F.2d 1297, 1305 (5th Cir. 1973), aff'd sub nom. East Carroll School Board v. Marshall, 424 U.S. 636 (1976).

Our analysis reveals that Mexican Americans constitute approximately 20 percent of the district's population and blacks approximately 10 percent. No minorities serve on the school board and, except for one who later withdrew, there have been no minority candidates at least since 1969. Although we have no specific evidence that this absence of minority participation in the affairs of the Prairie Lea Independent School District is either the direct or indirect result of discrimination, your submission indicated no compelling need for the adoption of the numbered place and majority vote requirements, and in the course of our research with respect to this change we have discovered none.

In these circumstances, the Attorney General is unable to determine whether or not the imposition of numbered place and majority vote requirements by the Prairie Lea Independent School District has the purpose or will have the effect

of denying or abridging the right to vote on account of race or color. Because the burden is on the submitting authority to prove the absence of discrimination, Section 5 of the Voting Rights Act requires that in such a situation an objection be interposed. See 28 C.F.R. Section 51.19. Accordingly, on behalf of the Attorney General, I must interpose an objection to the numbered place and majority vote requirements.

If, however, you have new information indicating that these requirements do not have a discriminatory purpose or effect, you may request us to reconsider this determination. See 28 C.F.R. Sections 51.12, 51.12, and 51.24. In addition, Section 5 permits the Prairie Lea Independent School District to seek a declaratory judgment from the United States District Court for the District of Columbia that the imposition of numbered place and majority vote requirements does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Until the objection is withdrawn or such a declaratory judgment obtained, the legal effect of this objection is to render the numbered place and majority requirements unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

MAR 7 1978

Mr. Edgar Coble
Education Service Center
Region XIII
7703 North Lamar Boulevard
Austin, Texas 78752

Dear Mr. Coble:

This is in response to your request for reconsideration of the objection interposed April 11, 1977, to the imposition of numbered place and majority vote requirements for the election of school board members of the Prairie Lea Independent School District, Texas. Your request was received on January 6, 1978.

We have given careful consideration to the new information furnished by you. On the basis of our analysis of this information, we have concluded that this 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. I, therefore, on behalf of the Attorney General am withdrawing the previously interposed objection to the numbered place and majority vote requirement in Prairie Lea Independent School District. We feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

MAY 1 1978

Mr. Richard G. Sedgeley, Esquire
609 Fannin Building
Suite 1301
Houston, Texas 77002

Dear Mr. Sedgeley:

This is in reference to the choice of election date for the elections of the County School Trustees of Harris County, Texas, and to changes in election publicity and in polling places resulting from the choice of election date, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 28, 1978.

Prior to 1977, elections for the County School Trustees were held on the first Saturday of October of odd-numbered years. This was the election date for 15 of the 20 school districts within Harris County, and joint elections were held with these 15 districts. As a result of the Uniform Election Act of 1977, this October date was no longer available. For the new date the County School Trustees chose the third Saturday in January of even-numbered years.

We have carefully considered the information you have provided with respect to this choice of election date and the information provided by other interested parties. In our analysis we have been guided by relevant judicial decisions, by which we feel bound. See Beer v. United States, 425 U.S. 130 (1976).

cc: Public File
A3355

According to the information provided by you the January election date was chosen by 9 of the 20 school districts in Harris County, more than any other date. However, much less than 45 percent of the voting age population or of the registered voters of Harris County resides in these 9 school districts. It further appears from the data you have presented that an equally large proportion of the county's voting age population and registered voters reside in a single district, the Houston Independent School District, whose elections will be held in November. The Houston district, moreover, appears to contain a substantial majority of the county's black and Mexican American voters and potential voters. In addition, the district that would appear to have the next greatest number of minority voters or potential voters, the North Forest Independent School District, also will not be holding January elections.

Thus, one result of the choice of the January date is that voters residing in the school districts, all predominantly white Anglo, that use the January election date will have the added incentive of participating in two elections held jointly, while other voters, including virtually all of the minority voters, will only have the County School Trustee election to attract them. In addition, in districts with joint elections all regular school district polling places will be in use, while in other districts a reduced number of polling places will be used. Thus in the January 1978 election there were only 10 polling places within the vast Houston Independent School District while during its last school district election, the Houston Independent School District used 168 polling places.

Finally, the disadvantage to minority voters and potential voters within Harris County does not appear to be counteracted by publicity with respect to the County School Trustee elections. Publicity appears to be limited primarily to legal notices and posting, and oral publicity in the Spanish language is not provided, despite the substantial Mexican American population affected.

Under Section 5 the burden is on the jurisdiction proposing a voting change to show that the new practice or procedure is not discriminatory in purpose or effect. The burden of proof is the same when a submission is made to the Attorney General as it would be in a suit for a declaratory judgment under Section 5 brought in the United States District Court for the District of Columbia. See Georgia v. United States, 411 U.S. 526 (1973). The Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, C.F.R. 51.19, state:

> If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the above-described burden of proof applicable in the district court, enter an objection. . .

Under these circumstances, we are unable to conclude, as we must under the Voting Rights Act, that the election date chosen by the County School Trustees of Harris County and the changes in election publicity and in polling places resulting from the choice of election date do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Accordingly, on behalf of the Attorney General, I must interpose an objection to these practices or procedures with respect to voting.

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 do not have the purpose and will not 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, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider this objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the County School Trustees' choice of election date and the changes in election publicity and in polling places legally unenforceable.

Sincerely,

Brian K. Landsberg
~~Drew S. Days III~~
Actg. Assistant Attorney General
Civil Rights Division

MSD:BHH:rjs
DJ 166-012-3
C1424-33; C1447-48
C1490-92; C15[illegible]8-11

JUN 11 1979

Mr. Robert M. Collie, Jr.
City Attorney
City of Houston
Legal Department
Post Office Box 1562
Houston, Texas 77001

Dear Mr. Collie:

This is in reference to the annexations and disannexations by the City of Houston, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on April 12, 1979. Although we have attempted to make our determination with respect to this submission on an expedited basis, we have been unable to respond until this time.

To determine that a change in the composition of a city's population resulting from annexations does not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group the Attorney General must be satisfied either that the percentage of members of a racial or language minority group in the city has not been appreciably reduced, that voting is not polarized between racial or language groups, or that, nevertheless, the city's electoral system will afford minority groups "representation reasonably equivalent to their political strength in the enlarged community. City of Richmond v. United States, 422 U.S. 358, 370 (1975).

To apply this legal standard to this submission we have carefully examined the information you have provided with respect to this submission, information provided by other interested persons, information in our files with respect to prior submissions by the City of Houston, and information in the record in Greater Houston Civic Council v. Mann, 440 F. Supp. 696 (S.D. Tex. 1977), pending on appeal, No. 77-2053 (5th Cir.).

According to the statistics you have provided, the submitted annexations have proportionally reduced the black population in the City of Houston from 25.0 percent to 24.1 percent, a reduction of 1.2 percentage points, and have reduced the Mexican American population from 14.8 percent to 13.5 percent, a reduction of 0.5 percentage points. Based on the relevant court decisions and in view of the relevant characteristics of the City of Houston, we find such reductions to be legally significant. See City of Richmond v. United States, 422 U.S. at 368-70; City of Petersburg v. United States, 354 F. Supp. 1021, 1028-29 (D.D.C. 1972), affirmed, 410 U.S. 962 (1973); City of Rome v. United States, C.A. No. 77-0797 (D.D.C. 1979), slip opinion at 63-64.

Our analysis of the statistics you have provided with respect to the voting patterns of different groups in the City of Houston and of precinct election returns for City elections reveals the frequent occurrence of polarized voting between blacks and whites and between Mexican Americans and whites. For example, in the 1977 election for the council position for majority black District D, 64.8 percent of the white voters but only 11.6 percent of the black voters voted for the white incumbent, Homer Ford, instead of for one of his three black challengers. See City of Richmond v. United States 376 F. Supp. 1344, 1345, 1356 (D.D.C. 1974), reversed on other grounds, 422 U.S. 358 (1975); City of Petersburg, 354 F. Supp. at 1025-26; City of Rome, slip opinion at 9-13, 64-66.

Although approximately two of every eight residents of the City of Houston are black, and approximately one of every eight residents is a Mexican-American, only one black, and no Mexican-American, has ever served on the eight-member City Council under the present electoral system.

Finally, a consideration of elections in the City of Houston, of the responsiveness of the City to the concerns and needs of blacks and Mexican Americans, and of the views of blacks and Mexican Americans and their representatives, leads to the conclusion that the present electoral system, under which all members of the City Council are elected in citywide elections, will not afford blacks and Mexican Americans 'representation reasonably equivalent to their political strength in the enlarged community." City of Richmond, 422 U.S. at 370. See City of Petersburg, 354 F. Supp. at 1025-27. City of Rome, slip opinion at 7-9, 64-66.

Thus none of the three conclusions that would support a determination that the annexations do not have a discriminatory effect can be reached. I am unable to conclude, therefore, as I must under the Voting Rights Act, that the submitted annexations will not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group.

Nevertheless, the two deannexations (Ordinance Nos. 78-2671 and 77-2197) and one annexation (Ordinance No. 77-2402) do not involve populated areas, and two annexations involve areas with substantial minority populations (Ordinance Nos. 77-2354 and 78-2380). With respect to the two deannexations and to these three annexations the Attorney General, accordingly, does not interpose any objection. (We feel a responsibility to point out, however, 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.)

With respect to the voting changes occasioned by the remaining fourteen annexations (Ordinance Nos. 77-1668, 77-2353, 77-2355, 77-2356, 77-2357, 78-2378, 78-2381, 78-2382, 78-2383, 78-2384, 78-2385, 78-2386, 78-2387, and 78-2388), because of the conclusion we have reached, I must, on behalf of the Attorney General, interpose an objection pursuant to Section 5.

Should the City of Houston adopt an electoral system in which blacks and Mexican Americans are afforded "representation reasonably equivalent to their political strength in the enlarged community" the Attorney General will consider withdrawal of this objection. Our analysis indicates that one such system would include the election of some members of the City Council from single-member districts, if the districts are fairly drawn and if the number of districts is sufficient to enable both blacks and Mexican Americans to elect candidates of their choice. See City of Richmond, 422 U.S. at 370-73; City of Petersburg, 354 F. Supp. at 1027, 1031; City of Rome, slip opinion at 65-70.

I wish to stress that this determination relates only to the voting changes occasioned by the annexations in question. The objection to the implementation of such changes does not affect the validity of the annexations themselves.

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 the changes affecting voting resulting from these annexations 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. However, until such a judgment is obtained from the District of Columbia Court, the effect of the objection by the Attorney General is to make the voting changes resulting from these annexations legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

SEP 21 1979

DSD:GWJ:DHH:mrk
DJ 166-012-3
C1424-28, 1431, 1433, 1447-48,
1490-92, 1409-09, C5899,
C5898, C6150-53

Mr. Robert M. Collie, Jr.
City Attorney
City of Houston
Legal Department
Post Office Box 1562
Houston, Texas 77001

Dear Mr. Collie:

This is in reference to the application of Section 5 of the Voting Rights Act of 1965, as amended, to the City of Houston.

The following matters are before us:

(1) The submission pursuant to Section 5 of the plan adopted by the City of Houston for nine councilmanic districts, Ordinance No. 79-1584, as modified by Ordinance No. 79-1638. Your submission was received on September 13, 1979; the modification was received on September 19, 1979; preliminary information was received on August 20, 24, 27, and 30 and September 6, 1979, and supplementary information was received on September 14 and 19, 1979.

(2) A request that the Attorney General withdraw the objection pursuant to Section 5 interposed on June 11, 1979, to fourteen annexations to the City of Houston. Your request was received on August 21, 1979; information supplementing this request was received on August 24 and September 14, 1979.

(3) The submission pursuant to Section 5 of changes with respect to voting to be implemented in the bond election scheduled for September 25, 1979, Ordinance No. 79-1429. Your submission was received on August 24, 1979.

(4) The submission pursuant to Section 5 of polling place changes in precincts 187, 313, 476 and 494, Ordinance No. 79-1637. Your submission was received on September 19, 1979.

In approaching these matters we are mindful that the City has determined a need to have a bond election on September 25, 1979. We are also mindful of the upcoming councilmanic election and the importance to the citizens of Houston to have the electoral system to be used in that election determined well in advance of its November 6, 1979, date. For these reasons, we have expedited our consideration of these matters as you requested. We have been able to expedite to the extent that we have primarily because of our continued study of the Houston situation since the receipt on February 8, 1979, of the City's initial submission of its annexations and deannexations, our constant communication with the City and other interested parties during the preparation for and our monitoring of the process leading up to the September 12, 1979, adoption by the City Council of the districting plan, and our intensive review of the plan since its adoption.

Our analysis has involved two basic questions: whether the districting plan adopted by the City satisfies the standards of Section 5 of the Voting Rights Act and whether the expanded city council membership elected under that districting plan provides a basis for the withdrawal of the June 11, 1979 objection. During our review we have sought to follow the legal principles developed by the courts in their interpretation of Section 5. See Beer v. United States, 425 U.S. 130 (1976); City of Richmond v. United States, 422 U.S. 358 (1975). We have also conducted intensive research and obtained the views of blacks, Mexican-Americans and other interested persons residing in the City of Houston. In particular we have considered the accuracy of the statistics used by the City in the creation of the adopted plan, the proportions of the City's population that blacks and Mexican-Americans constitute, the probable composition of a district

that could be expected to afford blacks or Mexican-Americans a reasonable opportunity to elect candidates of their choice, the probable impact that black and Mexican-American voters will be able to have in the nine districts created by the City's plan and in various alternative proposals, the factors given weight by the City in the development of the adopted plan, and the probable impact that black and Mexican-American voters will be able to have on the election of at-large-elected members of the council, including the Mayor.

On the basis of this research and analysis I am persuaded that the City of Houston has satisfied its burden of proving that the adopted districting plan does not have the purpose and will not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group and that the new councilmanic electoral system (the nine-five plan) with the districts that have been created for use under this system afford blacks and Mexican-Americans a fair opportunity to obtain "representation reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, 422 U.S. at 370. Accordingly, on behalf of the Attorney General I am not interposing an objection to the districting plan and I am withdrawing the June 11, 1979, objection to the fourteen annexations to the City of Houston.

In view of the foregoing, I also do not interpose any objection to the voting changes to be implemented in the bond election scheduled for September 25, 1979, nor to the four polling place changes.

We feel a responsibility to point out, however, 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. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine these submissions if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day periods.

I am taking the liberty of providing copies of this letter to the Court and to counsel for the private plaintiffs in Leroy v. City of Houston, C.A. Nos. 76-H-2174 and 78-H-2407 (S.D. Texas).

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc: Honorable Gabrielle K. McDonald
L.A. Greene, Jr., Esquire

JAN 17 1980

Richard G. Sedgeley, Esq.
609 Fannin Building, Suite 1301
Fannin & Texas
Houston, Texas 77002

Dear Mr. Sedgeley:

This is in reference to the procedures to be followed in the January 19, 1980, election of the County School Trustees of Harris County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, and to compliance with Section 5 by the county school trustees with respect to the date of school trustee elections. Your submission was received on December 20, 1979.

The seven members of the board of trustees serve six-year terms, with two or three positions filled every two years. As of November 1, 1972, school trustee elections were held on the first Saturday in October of odd-numbered years. The legal effect of House Bill 275 (1975), was to shift the election date to the first Tuesday after the first Monday in November of odd-numbered years. Before the school trustees had an occasion for holding an election on the new election date, the legislature enacted House Bill 443 (1977), which gave the school trustees discretion to choose from among four possible election dates, including the November date specified by House Bill 275. Pursuant to House Bill 443, the school trustees chose the third Saturday in January of even-numbered years as the election date.

A change of election date is subject to the preclearance requirement of Section 5 of the Voting Rights Act. The school trustees' submission of the choice of the January date was received by the Attorney General on November 25, 1977. More

cc: Public File

information with respect to that submission was requested on January 20 and received on February 28, 1978, and an objection with respect to the choice of the January date was interposed on May 1, 1978. Following a request for reconsideration received on July 3, 1978, I declined, on September 1, 1978, to withdraw the objection.

In brief, the basis for the objection was that black and Mexican-American voters in Harris County would have a lesser opportunity to participate in school trustee elections if those elections were held in January, when there would generally be fewer opportunities for joint elections in areas where most black and Mexican-American voters reside than if those elections were held in November, when they could be held jointly with elections of the City of Houston and of the Houston Independent School District and with constitutional amendment elections. Although the required federal preclearance had not been obtained, the school trustee election was conducted on January 21, 1978.

Your submission with respect to the proposed January 19, 1980, election indicates no changes in circumstances that could provide a basis for the withdrawal of the objection to the choice of the January election date. We note that, according to your submission, in the area that comprises the Houston Independent School District, only 25 polling places are scheduled to be used on January 19, 1980, although this area contains 275 Harris County voting precincts. Since the same adverse effect on minority voters that led to our previous objection would be expected to again peculiarly disadvantage minority voters, were the election held on Janaury 19, 1980, on behalf of the Attorney General I must again object to the county school trustees' choice of election date.

The combined effect of House Bill 275 (1975) and the objections under Section 5 of the Voting Rights Act is that the legal election date for the election held on January 21, 1978, was November 8, 1977, and that the legal election date for the election scheduled to be held on January 19, 1980, was November 6, 1979. Because the two legal election dates are no longer available for use, we believe that the most adequate remedy for the school trustees' failure to comply with Section 5 is for new elections to be held in conjunction with the primary elections of May, 1980, at which time

all seats filled in January, 1978 and those that were to be filled in January, 1980 would be open for election to fill the seats for the remainder of their terms. Any conflict with state law may be resolved through a consent decree filed in a Section 5 enforcement action in federal district court. All future elections would be held in November, unless and until an alternative date is precleared pursuant to Section 5.

To enable us to carry out our responsibility to enforce the Voting Rights Act, please let us know immediately whether the county school trustees accept this proposed schedule of elections.

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 the county school trustees' choice of election date has neither the purpose nor the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

If you have any questions concerning the matters discussed in this letter, please do not hesitate to telephone Voting Section Attorney David Hunter, at 202--724-7189.

Sincerely,

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division

DJ 166-012-3
D1992-1995

Roland Carlson, Esq.
City Attorney
Post Office Box 1758
Victoria, Texas 77901

SEP 3 1980

Dear Mr. Carlson:

This is in reference to the annexations (Ordinances No. 79-32a (1979), No. 79-34a (1979), No. 80-9a (1980), and No. 80-10a (1980)), to the City of Victoria in Victoria County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on July 10, 1980.

To determine that a change in the composition of a city's population resulting from annexations does not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group, the Attorney General must be satisfied either that the percentage of members of a racial or language minority group has not been appreciably reduced and that voting is not polarized between racial or language groups, or that, nevertheless, the city's electoral system will afford minority groups representation reasonably equivalent to their political strength in the enlarged community. See City of Richmond v. United States, 422 U.S. 358 (1975). See also 28 C.F.R. §51.19.

We have given careful consideration to the information you have provided as well as to comments and information provided by other interested parties. In addition to evidence of a general pattern of racially polarized voting in City of Victoria elections, we have noted that no Black or Mexican American has ever won election to the Victoria City Council under the at-large, majority vote, and designated place features of its electoral system. We have been presented with and have considered demographic information indicating

that it is most likely that the proportion of minority residents of the submitted annexations like their recent predecessors will be significantly smaller than that for the existing City of Victoria, and that the annexations will therefore dilute minority voting strength. The most reliable data before us indicates that the submitted annexations would decrease the combined minority percentage population by at least one percent and that, taken cumulatively with all annexations since 1973, they would decrease the population percentage by over three percent. In the context of Victoria's at-large election system, with its majority vote and designated post requirements, this dilution will not be counterbalanced by an ability on the part of the minority community to elect representation reasonably equivalent to its strength in the enlarged community. See City of Richmond, supra.

Under the circumstances we are, therefore, unable to conclude, as we must under Section 5, that the submitted annexation will not have the proscribed discriminatory purpose or effect. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the submitted annexations.

Should the City of Victoria adopt an electoral system that would afford minority voters an opportunity to elect candidates of their choice, the Attorney General will consider withdrawing this objection. Our analysis has indicated that a plan incorporating single-member districts could offer such a fair opportunity.

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 neither have 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, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the annexations legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action the City of Victoria plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Andrew Karron (202-724-7403), of our staff, who has been assigned to handle this submission.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

DJ 166-012-3
D1992-1995; D5041;
D5327-5330; D5367; D5026

MAR 13 1981

Charles Bluntzer, Esq.
City Attorney
Post Office Box 1758
Victoria, Texas 77901

Dear Mr. Bluntzer:

This is in reference to your request that the Attorney General reconsider his September 3, 1980, objection under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, to four annexations (Ordinance Nos. 79-32a, 79-34a, 80-9a, and 80-10a), and also in reference to your submission of five charter amendments and a three district and four at-large apportionment plan for the City of Victoria in Victoria County, Texas. Because our reconsideration of the outstanding objection is inextricably linked with, and directly affected by, the subsequently submitted charter changes, we have followed our usual practice, described in Section 51.37 of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878) and undertaken our reconsideration of the outstanding objection in conjunction with our review of the charter changes. Accordingly, both the submission and the request for reconsideration were considered completed on January 22, 1981, the date on which the submission of the charter changes and the reapportionment plan was completed.

The submitted charter changes include: an extension of councilmembers' terms from two to three years; the expansion of the city council from five to seven members; the adoption of a 3:4 mixed single-member district-at-large election method; the 2:2:3 staggering of terms so that an election will be held each year for one single-member district representative and one at-large representative; and a change in the runoff primary date. The Attorney General does not interpose any objections to any of these charter amendments or to the three district and four at-large plan. 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.

With regard to your request that the Attorney General reconsider his objection to the four annexations, in our view the dilution occasioned by these annexations is adequately remedied by the 3:4 method of election adopted by the City and to which we interpose no objection as indicated above. Accordingly, on behalf of the Attorney General, I am withdrawing the objection to the four annexations.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

JUN 5 1981

[illegible] McCreary, Esq.
[illegible] Ellis
First City National Bank Building
Houston, Texas 77002

Dear Mr. McCreary:

This is in reference to the reduction in polling places, from thirteen to one, for the Burleson County Hospital District in Burleson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on April 7, 1981.

In our consideration of your submission, we have considered carefully the information furnished by you, along with information and comments provided by other interested parties. Our review and analysis of this matter reveals the following facts: The Burleson County Hospital District has boundaries coterminous with Burleson County which has a population of 12,313, of whom twenty-two percent are black and ten percent are Mexican American. The number of polling places in the District was reduced from thirteen throughout the county to a single location in the City of Caldwell. One effect of this reduction in the number of polling places was a drop in voter participation from approximately 2,300 voters participating in the 1977 election to approximately 300 voters participating in 1979 and 1980 elections.

The bulk of the black population is concentrated in an area known as Clay Station, which is over thirty miles from the District's single polling place in the City of Caldwell. A large percentage of the county's Mexican-American population is found within the City of Somerville which is about nineteen miles from the City of Caldwell. Both of these areas had polling places that were eliminated by the change to a single polling location.

We understand that for the April 4, 1981, election, minorities from the Clay Station and Somerville areas were able to meet the burden placed on them by the use of a single polling place in Caldwell only through a concerted effort with other county voters with similar interests whereby they themselves successfully provided publicity for the election and transportation to the single poll. However, this additional burden imposed upon the minority voters to obtain access to the single poll was caused by the elimination of polling places in areas which are centers of minority population. Thus, the removal of polling places in the minority areas had a disparate impact on minority voters.

Under Section 5, the Burleson County Hospital District has the burden of proving that the reduction in the number of polling places from thirteen to one does not represent a retrogression in the position of minority voters in the district (see Beer v. United States, 425 U.S. 130 (1976)), and that the submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.39(c) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Thus, on behalf of the Attorney General I must interpose an objection to the continued use of a single polling place in future elections held by the Burleson County Hospital District.

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 this 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. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection and in that connection we have noted your request for a conference "in the event clearance is not anticipated". Because insufficient time remains to grant such a conference during the 60-day period allowed by statute to object we are sending this notification without affording such a conference. However, we would be pleased to hold a conference under the reconsideration procedures referred to above, if you desire and request it. In

any event, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of a single polling place for elections held by the Burleson County Hospital District legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter the course of action the Burleson County Hospital District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Cabel (202-724-7439), Director of Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

WBR:GWJ:PFH:RSB:bhq
166-012-3
D2634

25 JAN 1982

Honorable David Dean
Secretary of State
Elections Division
P. O. Box 12887
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to the Legislative Redistricting Board Plan Number 1 which provides for the redistricting of the Senate for the State of Texas submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on December 1, 1981.

We have given careful consideration to the information that you have supplied. In addition, we have examined comments and information provided by other interested persons. As you know, under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also, Procedures for the Administration of Section 5, 28 C.F.R. 51.39(e) (46 Fed. Reg. 878).

In this instance we have received a number of allegations that the plan discriminates against black and Mexican-American voters in certain parts of the state. In fact, your submission itself states:

> It has come to my attention that the submitted Plan may not comply with the Voting Rights Act in all respects. There are claims that under the Plan there is a retrogression in opportunities for minority representation. In my opinion several of these claims are meritorious.

Because of the number of questions which thus have been raised about the plan and because you have requested that we make a decision on this submission on the basis of the information now before us, we are unable to conclude that the state has satisfied its burden of demonstrating that the plan "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or [membership in a language minority group]." 42 U.S.C. 1973c. Accordingly, on behalf of the Attorney General, I must interpose an objection to the plan.

At the outset, we note that in the ten-year period since the 1970 Census the state's population has increased by 27.1 percent. A significant portion of that increase was experienced in the minority community. This is especially true for the Mexican-American population which increased 44.96 percent since 1970.

The senate districting plan, however, does not appear to reflect this increase in the voting strength of the minority community. The net result seems to be a plan in which minorities enjoy no significant gains even though their percentage of the population has increased and the demography of the state presents several areas for recognizing the increased potential of the minority community. While we recognize there is no obligation to maximize the political impact of a minority group, it has been alleged, and not adequately refuted, that the state's plan, as it affects Bexar and Harris Counties, unnecessarily fragments minority concentrations in such a manner as to dilute the voting strength of the minority communities.

For example, in Bexar County, existing District 19 is underpopulated according to the 1980 Census and thus requires additional persons to meet one person-one vote standards. The proposed plan for this area, however, removes a substantial number of Mexican Americans from this district and adds a larger number of Anglos. The effect of this method of drawing the boundaries for

proposed District 19 appears to be a dilution of Mexican-American voting strength. Regarding Harris County, we have received allegations that the senate districts unnecessarily fragment the minority community and the odd configurations of proposed Districts 6 and 13 lend support to that claim and raise substantial question as to whether the plan, as it affects Harris County, satisfies the requirements of Section 5.

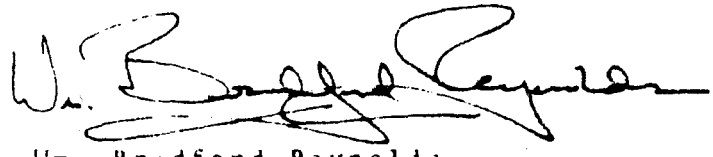
Additionally, we have received allegations that the state used criteria for drawing senate districts in Harris County which differ from the criteria used in drawing senate districts in Dallas County. The claim is that in Harris County the state divided the minority communities among several districts so as to create districts in which minorities could have an "impact" even if they could not elect candidates of their choice. In Dallas County, the minority community apparently was treated as a "community of interest" and the plan seems to recognize the potential of that community to elect candidates of their choice to the senate. The state has presented no information to demonstrate why such divergent criteria were employed or to establish that the use of the seemingly inconsistent criteria does not have a discriminatory effect.

Since the state has failed to demonstrate that the plan is nondiscriminatory it is necessary to interpose an objection. We note, however, that the concerns that lead to this decision are based, in large part, on our being unable to reach the conclusion that the allegations of racial and ethnic discrimination have been sufficently refuted on the basis of the information presently before us. Thus, if the state can present evidence which satisfactorily addresses the issues that have been raised by the complaints referred to above, we would be willing to reconsider this objection pursuant to the applicable provisions of the Procedures for the Administration of Section 5. See, 28 C.F.R. §51.44. If you desire, our staff is also available to meet with you and other state officials to discuss these concerns.

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. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of this objection is to render the redistricting of the Texas Senate as authorized by the Legislative Redistricting Board's Plan Number 1 legally unenforceable.

If you have any questions concerning this letter, please feel free to call Carl Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Hon. Mark White
Attorney General
State of Texas

WBR:GWJ:PFH:DSC:bhq
DJ 166-012-3
E0840

81-0295

23 FEB 1982

Honorable Mark White
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711

Dear Mr. Attorney General:

This is in response to your letters dated February 8, 1982 and February 9, 1982 requesting reconsideration of the Section 5 objections interposed on January 25 and 29, 1982. As you know, this Department has recognized the Secretary of State as the official of the State of Texas responsible for submitting the congressional and legislative redistricting plans. Thus we cannot treat your letters of February 8 and 9 as requests for reconsideration of the objections at issue.

However, by letter dated February 9, 1982, the Secretary of State has requested that we reconsider the objections and that review process is currently underway. Your letters and supporting information will be considered in the course of our review and we invite you to submit whatever additional information you deem relevant.

I am enclosing for your information a copy of a letter which we have sent to the Secretary of State regarding the objections of January 25 and 29, 1982.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: William P. Hobby
Lieutenant Governor