

April 5, 1993

Michael J. Noland, Esq.
Kahn, Soares & Conway
P.O. Box 1376
Hanford, California 93232

Dear Mr. Noland:

This refers to 73 annexations to the City of Hanford in Kings County, California, 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 request for additional information on February 2 and March 25, 1993.

We note that this submission marks the first time the City of Hanford has sought Section 5 preclearance for any annexation despite the fact that the city has been covered by Section 5 since September 23, 1975, and preclearance is required for any change affecting voting, including an annexation, "different from that in force or effect on November 1, 1972." 42 U.S.C. 1973c; Procedures for the Administration of Section 5, Appendix. This record of noncompliance is particularly striking because, as noted below, nearly half of the city's current population resides in these unprecleared annexed areas. Moreover, the city appears to have implemented other voting changes since November 1, 1972, without the requisite preclearance. We encourage the city promptly to take all steps necessary to bring the city into full compliance with Section 5.

With regard to the annexation adopted on September 11, 1972, (Ordinance No. 1205), the Attorney General will make no determination regarding the specified change since it was implemented prior to November 1, 1972, and is not subject to the preclearance requirements of Section 5. See 28 C.F.R. 51.4 and 51.35.

With regard to the annexations identified in Attachment A, each of which you have identified as commercial/industrial and uninhabited, the Attorney General does not interpose any objection to the specified changes. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See 28 C.F.R. 51.41.

We cannot reach the same conclusion with regard to the annexations identified in Attachment B, each of which is residential. We have considered carefully the information you have provided, as well as Census data and comments and information from other interested persons. Because the city failed to seek preclearance of the annexations identified in Attachment B in a timely manner upon their adoption, we must review the cumulative effect of the annexations at this time, based on the most current available population data. In addition, it appears that the persons who reside in the annexed areas became city residents from areas outside the city and are not, for the most part, persons who moved from the pre-annexation city to the annexed areas. See City of Rome v. United States, 446 U.S. 156, 186-87 (1980); City of Pleasant Grove v. United States, C.A. No. 80-2589 (D. D.C. Oct. 7, 1981); 28 C.F.R. 51.54(b)(2).

Based on the data available to us, the city's population, excluding the persons residing in the annexed areas identified in Attachment B is 16,224, of whom 5,831 (35.9 percent) are Hispanic. The annexations identified in Attachment B add approximately 14,977 persons as city residents, only 3,346 of whom (22 percent) are Hispanic. Thus, the effect of these annexations is to decrease the Hispanic proportion of the city's pre-annexation population by approximately 6.5 percentage points, from 35.9 percent to 29.4 percent.

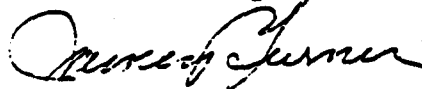
The city has an at-large election system for city councilmembers, with staggered terms and a plurality-win requirement. Our analysis of the information available to us suggests that Hispanic voters have preferred Hispanic candidates in recent elections, but have been unable to elect those candidates due to an apparent pattern of polarized voting. In these circumstances, the reduction in the Hispanic share of the city's population, as effected by the residential annexations, which have been implemented in past elections, appears to have diminished whatever opportunity would exist for Hispanic voters in the pre-annexation city to elect representatives of their choice to the city council.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that submitted changes have neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Annexations that result, as here, in a significant decrease in the minority proportion of a city's population have such a proscribed effect, and, therefore, may satisfy Section 5 only if the method used for electing the city's governing body "fairly reflects the strength of the [minority] community as it exists after the annexation." City of Richmond v. United States, 422 U.S. 358, 370-71 (1975); see also City of Rome, *supra* at 187. 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 proposed annexations identified in Attachment B.

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 annexations identified in Attachment B have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. 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 annexations identified in Attachment B continue to be legally unenforceable insofar as they affect voting. See Dotson v. City of Indianola, 514 F. Supp. 397, 403 (N.D. Miss. 1981 (three-judge court) (municipal residents of areas annexed after Section 5 coverage date may not participate in municipal elections unless and until the annexations receive Section 5 preclearance). See also 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 Hanford 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,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Attachment A

City's Annex. #	Date of Adoption	Ordinance No.
23	December 26, 1972	1221
24	February 26, 1973	1235
27	June 25, 1973	1260
28	November 13, 1973	1287
29	July 23, 1973	1284
32	October 16, 1974	1359
41	July 22, 1975	1404
42	February 10 1976	869
48	July 18, 1977	1505
49	July 18, 1977	1504
53	May 1, 1978	1546
80	May 19, 1980	1678
82	February 2, 1981	1710
89	September 16, 1986	86-28
103	June 5, 1990	90-21

City's Annex. #	Date of Adoption	Ordinance No.
18	November 13, 1972	808
20	August 13, 1973	1268
21	September 24, 1973	820
22	September 10, 1973	818
25	September 10, 1973	915
26	June 25, 1973	1259
30	July 23, 1974	836
31	October 9, 1973	1279
33	April 9, 1974	1315
35	May 27, 1975	1394
36	November 26, 1974	841
37	November 26, 1974	842
38	September 24, 1974	838
39	October 14, 1975	864
43	August 1, 1977	1508
47	June, 6, 1977	1494
50	September 19, 1977	1515-A
51	September 19, 1977	1516
52	September 19, 1977	1517
54	March 6, 1978	1531
55	July 17, 1978	1558
56	July 17, 1978	1559
61	August 7, 1978	1564
62	February 5, 1979	1618
63	September 5, 1978	
64	February 5, 1979	1597
65	November 6, 1978	1580
66	December 4, 1978	1589
67	April 16, 1979	1609
68	May 7, 1979	1612
69	June 4, 1979	1620
72	September 2, 1980	1704
73	February 19, 1980	1660
74	February 19, 1980	1661
75	June 2, 1980	1684
76	June 2, 1980	1683
77	April 7, 1980	1668
78	September 15, 1980	1713
79	July 21, 1980	1688
81	October 6, 1980	1714
83	May 5, 1981	1740
84	January 5, 1982	1778
86	April 19, 1983	1852
87	April 1, 1986	86-4
88	October 18, 1983	1890
90	October 7, 1986	86-32
91	September 29, 1987	87-22
92	February 17, 1987	87-8
93	January 16, 1987	87-23

Attachment B Con't

94	January 19, 1988	88-02
95	November 3, 1987	87-42
96	June 7, 1988	88-20
98	September 18, 1990	89-43
99	December 5, 1989	90-51
101	September 18, 1990	90-52
102	May 15, 1990	90-18
104	March 3, 1992	92-10