

Mr. Don Savage
City Manager
P. O. Box 209
Pleasanton, Texas 78064

14 OCT 1982

Dear Mr. Savage:

This is in reference to the August 14, 1982, referendum election; the majority vote requirement for the mayor; the implementation of numbered positions for councilmembers; the August 9, 1980, charter commission and charter commission member election; and the adoption of bilingual election procedures for the City of Pleasanton in Atascosa 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. Your submission was completed on August 16, 1982.

The Attorney General does not interpose any objections to the August 14, 1982, and August 9, 1980, referendum elections, the adoption of bilingual election procedures, and the majority vote requirement for the election of the mayor. 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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With respect to the implementation of numbered positions for councilmembers, we have considered carefully the information you have provided, as well as comments from other interested parties. Although Hispanics have been elected to the city council under the present method of election (i.e., at-large with plurality vote requirement), our analysis of the available information indicates that the addition of the numbered posi-

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tion requirement will have the effect of making it more difficult for Hispanic candidates to be elected, when compared to the present system. Such a situation would lead to a retrogression in the position of minority voters and thus would have an impermissible effect under the Act. See Beer v. United States, 425 U.S. 130 (1976).

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 also, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. Because of the potential for dilution of the Hispanic voting strength inherent in the use of numbered positions and because the city has not advanced any compelling reason for its use, I am unable to conclude that the burden of proof has been sustained and that this change, in the context of an at-large system, does not have a racially discriminatory purpose and will not have a racially discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of numbered positions for the election of councilmembers.

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 (28 C.F.R. 51.44) 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 is obtained, the effect of the objection by the Attorney General is to make the implementation of numbered positions legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of

the course of action the City of Pleasanton plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division