



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 13, 1990

Robert C. Story, Esq. .
City Attorney
128 East 4th Street
Freeport, Texas 77541

Dear Mr. Story:

This refers to the imposition of a majority vote requirement for the election of mayor and councilmember for the City of Freeport in Brazoria 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 the information necessary to complete your submission on September 11, 1990.

We have given careful consideration to the information in your submission as well as information from the Census and other sources. We note that the City of Freeport has a population, according to the 1980 Census, that is 13.1 percent black and 27.2 percent Hispanic. In combination, these minority groups comprise 40 percent of the city's population, yet it appears that only one black and only one Hispanic have ever been elected to city office.

The current method of electing the city council is at large with numbered posts. Where voting is racially polarized, this election method is commonly understood to place a significant limitation on the ability of racial and ethnic minorities to participate equally in the political process and elect candidates of their choice. From our review of election returns in Freeport, it appears that racial bloc voting does occur in the city to a significant degree. In this context, the imposition of a majority-vote requirement clearly will operate as an added obstacle to the potential for minority voters to elect candidates of their choice to city government in Freeport. Indeed, earlier this year an Hispanic candidate became the first Hispanic to be elected to the Freeport City Council by receiving a slim plurality of the vote in a contest against several Anglo candidates. The ability of minority voters to elect their preferred candidate under such circumstances would be


significantly diminished if a majority vote is required for election.

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 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. Therefore, on behalf of the Attorney General, I must object to the majority vote requirement for city offices.

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 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. 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 majority vote requirement continues to be legally unenforceable. See 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Freeport plans to take concerning this matter. If you have any questions, you should call George Schneider (202-514-8696), an attorney in the Voting Section.

Sincerely,


John R. Dunne
Assistant Attorney General
Civil Rights Division