



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

MAY 6 1991

Analeslie Muncy, Esq.
City Attorney
1500 Marilla, 7-B North
Dallas, Texas 75201

Dear Ms. Muncy:

This refers to proposed amendments to the municipal charter of the City of Dallas which provide for an increase in the size of the city council from eleven to fifteen members; a change in the method of election for council members and mayor from election from eight single-member districts and three at-large seats, including the mayor, for concurrent terms by majority vote, to a 10-4-1 election system, which includes ten single-member local districts, four single-member regional quadrant districts, and the mayor at large for concurrent terms by majority vote; a change from a two-year to a four-year term for mayor; a decrease in the number of consecutive terms for the mayor; the changes in the definition of term in order to determine the number of consecutive terms served for mayor; the changes in the definition of term to determine the number of consecutive terms for non-mayoral councilmembers; the change in the effective date for new terms of office for mayor and council; the changes in candidate qualification (Chapter IV, Section 6); the alteration in ballot language to implement the proposed 10-4-1 method of election (Chapter IV, Section 8); the changes in the powers and duties of the mayor and council pursuant to Chapter III, Section 2; Chapter XVI, Section 1; Chapter XVII, Section 2; and Chapter XXIV, Section 13; and the 1991 redistricting plan for the 10-4-1 election system for the City of Dallas in Collin, Dallas, Denton, Kaufman, and Rockwall Counties, 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 last submittal of information necessary to review these matters on May 3, 1991.

We have carefully reviewed the information you have provided, along with information available to us from related Section 5 submissions, the Bureau of the Census, and other interested parties. At the outset, we note that 1990 Census data reflect a significant increase in the city's Hispanic proportion.

of total population and that black and Hispanic residents now constitute 50 percent of the city's total population. We also note that the federal district court has found that the existing 8-3 election method for the city council violates Section 2 of the Voting Rights Act and has ordered new elections as soon as possible under a plan that will "remedy the adverse effects of the 8-3 system -- the denial of equal access to the City's political process -- which African[-Americans] and Mexican-Americans have suffered in Dallas, for some 10-15 years." Williams v. City of Dallas, 734 F. Supp. 1317, 1412 (N.D. Tex. 1990) (liability); No. 3-88-1152-R (N.D. Tex.) (Feb. 1, 4, 5, and 27, 1991) (remedy); 59 U.S.L.W. 3672 (U.S. Apr. 2, 1991) (No. A-716), denying application to vacate stay from No. 91-1178 (5th Cir. Mar. 15, 1991) (order staying remedial orders). In its most recent order the court of appeals deferred a review of the merits of the appeal in order to provide a "reasonable time" for the Justice Department to review a submission of a change in the method of election and a redistricting plan proposed by the city.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of demonstrating that a proposed change does not have a racially discriminatory purpose or effect. Georgia v. United States, 411 U.S. 526 (1973). In addition, where, as here, an existing election system has been held by the court to be in violation of the Voting Rights Act, the affected jurisdiction not only bears the burden of demonstrating that the proposed plan is free of the proscribed purpose and effect, but also the plan must remedy the dilution found by the court to exist. See S. Rep. No. 417, 97th Cong., 2d Sess. 31 (1982). See also Dillard v. Crenshaw County, 831 F.2d 246, 249 (11th Cir. 1987); Edge v. Sumter County Sch. Dist., 775 F.2d 1509, 1510 (11th Cir. 1985). The proposed 10-4-1 election method now before us for review under Section 5 is the city's proposal to remedy the violation found by the Williams court.

In addressing these matters, the city has presented to us alternative proposals consisting of one component of four quadrant districts [4C] and two alternative components for the ten local districts [10F(3) and 10I(1)]. You have explained that the city council has formally adopted both ten-district components and that while 10F(3) initially was the city's preferred plan, the city now considers 10I(1) to be its preferred ten-district plan. The city maintains that its proposed electoral system and the redistricting plan have no racially discriminatory purpose or effect and provide minority voters with an equal opportunity to participate and elect their chosen candidates. Concerns have been raised, however, that under the proposed "10-4-1" system it is not possible to devise a plan in which minority voters will be afforded the same opportunity as white voters to elect their preferred candidates to the city council. Our review of the alternatives currently under submission to us lends some credence to those concerns.

We have carefully analyzed population and registered voter data for each of the proposals, as well as citizenship data, election returns, and statistical analyses by the city's experts and others. We note that the city has acknowledged that there was virtually no minority input in the development and selection of any of the redistricting proposals submitted for our review. Furthermore, with regard to the quadrant component, the information available to us suggests that these regional districts are, in many respects, the functional equivalent of the at-large council positions that have been found to be racially discriminatory, and we are not persuaded that the quadrant districts, as submitted, remedy the dilution occasioned by at-large elections in Dallas.

With regard to the opportunities for both black and Hispanic voters under the ten-district components, it appears that neither of the proposals is designed to afford equal opportunity to minority voters. For example, in both the 10F(3) and the 10I(1) plans, it appears that neither of the two districts that the city offers as providing an opportunity for Hispanic voters actually would accomplish that goal. In both plans, it appears that Hispanics are less than 45 percent of the citizen voting-age population in each of the two districts. Furthermore, those districts are drawn in a way that unnecessarily merges concentrations of Hispanic and white voters, particularly in 10F(3) District A and 10I(1) District B, where the white voter group is one with particularly high registration and turnout rates. The proposed ten-district plans also merge concentrations of black and white voters in some areas where the white voter group historically has been antipathetic to black persons. In addition, the unnecessary fragmentation of black neighborhoods in 10F(3) between Districts B, C, and F, and in 10I(1) between Districts E and F would appear to minimize black voting strength.

We further note the city's recognition that under both of the two adopted ten-district proposals as well as under the quadrant component, the opportunities for Hispanic voters are not expected to be fully realized until the mid-1990s at the earliest, notwithstanding the concerns of the Hispanic community and the conclusion by the Williams court that Hispanic voters be able to elect candidates of their choice to the council as soon as possible.

In sum, the city maintains that the proposed electoral system will provide seven districts that allow minority voters to participate equally in the electoral process and to elect candidates of their choice to office. In our view, however, the city has not demonstrated that the proposal now before us provides black and Hispanic voters with a realistic opportunity to elect candidates of their choice to the city council in any of

the quadrant districts as proposed to be drawn or in any more than three of the ten local districts.

With regard to the proposal to amend candidate qualifications so that a term of 365 days, rather than two full years, will be counted in determining the limitation on consecutive terms for a non-mayoral councilmember, the information available to us demonstrates that only the two incumbent black councilmembers would be directly affected by this proposal, such that they would be ineligible to seek re-election in 1991. Further, the information available to us indicates that the change was proposed for this purpose and that the city rejected an alternative that would have applied this change prospectively, rather than retroactively.

In light of the information presently available to us, therefore, and under the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance with regard to either of the 10-4-1 proposals now before us or the proposed changes in the manner of counting consecutive terms to determine non-mayoral candidate eligibility. In addition, it does not appear that either of the current proposals assures to the affected minority group members the equality of opportunity necessary to remedy the Section 2 violation found to exist in the current system. Accordingly, on behalf of the Attorney General, I must object to the proposed redistricting plans and, therefore, to the proposed charter amendments establishing the 10-4-1 method of election and changing the definition of terms under the consecutive terms provisions for non-mayoral candidate eligibility.

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. 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 objected-to changes continue to be legally unenforceable. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.10 and 51.45).

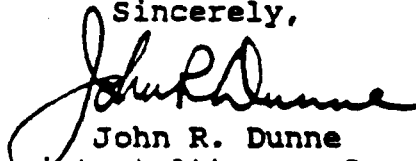
The Attorney General does not interpose any objection to the increase in the size of the city council from eleven to fifteen members, the change in the effective date of term of office for mayor and council, and the changes in the powers and duties of the mayor and council pursuant to Chapter III, Section 2; Chapter XVI, Section 1; and Chapter XVII, Section 2. However, we note that Section 5 expressly provides that the failure of the

Attorney General to object does not bar subsequent litigation to enjoin the enforcement of these changes. 28 C.F.R. 51.41.

The remaining changes under the proposed charter amendments are directly related to or dependent on the change to the proposed 10-4-1 method of election. Accordingly, the Attorney General is unable to make any determination under Section 5 at this time regarding concurrent terms by majority vote for mayor and council; a change from a two-year to a four-year term for mayor; a decrease in the number of consecutive terms for the mayor; the changes in the definition of term in order to determine the number of consecutive terms served for mayor; the changes in candidate qualification (Chapter IV, Section 6); the alteration in ballot language to implement the proposed 10-4-1 method of election (Chapter IV, Section 8); and the changes in the powers and duties of the mayor and council pursuant to Chapter XXIV, Section 13. See also 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Dallas plans to take concerning these matters. If you have any questions, you should call Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,


John R. Dunne
Assistant Attorney General
Civil Rights Division