U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 07 1992

Ronald B. Collins, Esq.
Duckett, Bouligny, Collins,
Clapp & Collins
P.O. Box 1567
El Campo, Texas 77437

Dear Mr. Collins:

This refers to the proposed change in the method of concurrently electing the three at-large members of the city council from three elected by plurality vote without numbered positions to two elected by plurality vote without numbered positions, and one elected by majority vote to a separate position designated as the mayor; and the change in the method of electing the mayor from selection among the council to direct election for the City of El Campo in Wharton 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 your response to the written request for additional information on November 8, 1991; further supplemental information was received on December 13, 1991.

We have considered carefully the information you have provided, as well as information provided by other interested persons. At the outset, we note that in the context of the ongoing pattern of racially polarized voting which appears to exist in city elections, the current election system permits minority voters two avenues by which they may elect candidates of their choice to the seven-member city council--in the single-member district in which minorities constitute a substantial majority of the population, and as a result of the opportunity afforded minorities to elect one of the at-large councilmembers. This latter opportunity arises in major part from the use of a plurality-win provision and the fact that minority voters may

utilize the device of single-shot voting in a situation where three positions are being filled concurrently. Indeed, as appears to be generally recognized in the city, the ability to single-shot has played an important role in the success enjoyed by minority voters in recent at-large elections.

The city now proposes to reduce the number of at-large seats elected as a group from three to two by separately designating one seat on the ballot as that of the mayor. In this regard, we note that of the four elections in which a minority candidate has been elected at large, in one the minority candidate finished third (and only barely ahead of the fourth-place finisher) and in two others the minority candidate finished second, but only a few votes ahead of the third-place finisher. In these circumstances, it appears that the proposed shrinking of the at-large pool from three to two would diminish the opportunity of minority voters to effectively single-shot and thus would "lead to a retrogression in the position of ... minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). Likewise, the change to a majority-vote requirement for the separately designated at-large position would appear to contribute further to such a retrogression in minority electoral opportunity.

As you are aware, the Attorney General has found it necessary to interpose Section 5 objections on three other occasions in recent years (1985, 1986, and 1989) to efforts by the city to foreclose the use of single-shot voting (through the adoption of numbered positions or staggered terms). It has been alleged that the instant changes were adopted as yet another attempt to undercut the use of the single-shot device. The city avers that it has a justifiable interest in directly electing its mayor. While such an interest certainly is cognizable under the Voting Rights Act, here it appears that reasonable alternatives were available to accomplish this goal without limiting minority voting strength, and we have been provided no convincing nonracial explanation for the city's choice of the instant alternatives.

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. See 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 change in the method of electing the at-large councilmembers involving the separate

designation of one seat and the adoption of a majority vote requirement. With respect to the proposed change to a directly elected mayor, no determination will be made since this is directly related to the objectionable changes.

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 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 submitted changes continue to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 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 El Campo plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division