U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

April 26, 1993

Mr. Robert Gorsline
City Secretary
310 South Main
Lamesa, Texas 79331

Dear Mr. Gorsline:

This refers to the change from a plurality to a majority vote requirement for the election of the mayor for the City of Lamesa in Dawson 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 responses to our April 27, 1992, request for additional information on February 23, and April 7 and 9, 1993.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested parties. According to the 1990 Census, Hispanics comprise 46 percent of the city's total population and 39 percent of its voting age population. Review of Census data reveals that these figures represent an increase of six percentage points in the Hispanic proportion of the city's total population since 1980.

Prior to 1992, the mayor of Lamesa was selected from among the city's seven elected councilmembers, three of whom were elected from single-member districts by majority vote, and four of whom were elected at large by plurality vote. Under this method of selection, no Hispanic was ever appointed mayor. On April 27, 1992, the Attorney General precleared a change to six councilmembers elected from single-member districts and the mayor elected at large. We did not preclear the city's proposed majority vote requirement for the election of the mayor because the information sent was insufficient to enable us to determine that the change satisfied the requirements of Section 5. As a result, we requested additional information about the majority vote requirement for mayoral elections.

After reviewing the city's response to that request and other information available to us, we see an apparent pattern of racially polarized voting in city elections that has hampered the ability of Hispanic voters to elect candidates of their choice to at-large positions on the city council. In this context, the imposition of a majority vote requirement may further limit the opportunity of Hispanic voters to elect candidates of their choice by increasing the probability of "head-to-head" contests between minority and white candidates. See, e.g., Rogers v. Lodge, 458 U.S. 613, 627 (1982); City of Port Arthur v. United States, 459 U.S. 156 (1982).

We have considered the city's explanation that the use of a majority vote requirement for election of the mayor does not represent a change in the city's past electoral procedures because the mayor was previously selected by a majority of city councilmembers. In addition, the city suggests that it has used a majority vote requirement in its single-member districts since 1984 and that these elections are similar procedurally to the election of a single council position, such as mayor.

We do not find either of these arguments persuasive. Until 1992, all of the city's at-large councilmanic positions were elected by a plurality vote requirement. The city now proposes to elect the remaining at-large position on the council by a majority vote requirement, a change from the manner in which at-large seats on the council have previously been elected. Nor is the selection of a mayor, by a majority of the votes cast by councilmembers, equivalent to the direct election of a mayor by a majority of the votes cast. While a multiplicity of candidates and a plurality vote winner are possible in a direct election, that scenario is unlikely in the appointment system. Under these circumstances, we cannot conclude that the city has demonstrated that the adoption of a majority vote requirement for mayoral elections will not "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).

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 the city's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the use of a majority vote requirement for election of mayor.

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 use of a majority vote requirement in elections for mayor 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, 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, use of a majority vote requirement in elections for mayor continues to be legally unenforceable. 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 Lamesa plans to take concerning this matter. 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