U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

September 12, 1994

Paul Lyle, Esq.
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P.O. Box 328
Plainview, Texas 79073-0328

Dear Mr. Lyle:

This refers to the change in the method of electing the five councilmembers from at large to a cumulative voting system for the City of Morton in Cochran 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 our May 20, 1994, request for additional information on July 14, 1994.

We have carefully considered the information that you have provided, as well as information provided by other interested persons. According to the 1990 Census, the City of Morton has a total population of 2,597 persons, of whom 51.7 percent are Hispanic and 7.4 percent are black. The city's minority population suffers from a history of discrimination which appears to have resulted in depressed education and registration levels. For example, over 13 percent of Hispanic citizens in the county do not speak English well enough to participate in the political process without Spanish language materials. In addition, based on the registration rates for the county, minority voters are approximately 34 percent of the city's registered voters. The electoral history of the city suggests that voting is polarized along racial and ethnic lines to such a degree that no minority person has ever served as a councilmember.

The city council began its consideration of changing its at-large method of election after private voting rights litigation was filed by statewide LULAC. Two possible alternatives emerged -- a single-member districting plan, including two majority minority districts, and a cumulative voting system.

The city council then considered both plans. It adopted cumulative voting despite the fact that the minority population is geographically concentrated in such a way that it is relatively simple to draw two single-member districts with Hispanic voting age populations at or above 65 percent. A single public hearing to explain the use of the cumulative voting system was held. The hearing was advertised only in English and it was not attended by any minority residents. There was no effort to solicit specifically the views of the local minority community contemporaneously with the council's consideration of these plans. No investigation was made into whether or not the minority community had a complete understanding of the cumulative voting system.

After this system was adopted, the city did not engage in any type of bi-lingual voter education program to ensure that minority voters would understand it. There has been no Spanish-language outreach to the minority community in the form of public service announcements, advertisements, mailers, demonstrations, etc., to provide the minority community with the information it needs to use effectively the cumulative voting system.

These facts bear heavily on our consideration of the ability of minority voters to elect candidates of their choice under the proposed system, and also on the reasons for the city's adoption of this system, as opposed to available 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). The existence of some legitimate, nondiscriminatory reasons for the voting change does not satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). 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 proposed change in the method of election for the city council.

We note 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. 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 change in the method of election continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the City of Morton plans to take concerning this matter. In that regard, I have asked the Voting Section to consider whether the at-large system violates Section 2 of the Voting Rights Act, should the city determine to take no further action toward changing that system. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

Kerry Scanlon
Acting Assistant Attorney General
Civil Rights Division