



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Lloyd Garza, Esq.
City Attorney
Ms. Norma Rodriguez
City Clerk
P. O. Box 839966
San Antonio, Texas 78283-3966

OCT 21 1994

Dear Mr. Garza and Ms. Rodriguez:

This refers to the procedures for conducting the August 13, 1994, special referendum election, and 39 voting precinct consolidations and the selection of polling places therefor, two early voting location changes, extended hours for early voting, 16 polling place changes, and a name change for the 12000 Perrin Oaks Center for the August 13th special election in the City of San Antonio, Bexar 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 August 5, 1994, request for additional information on August 22, 1994. On August 9, 1994, we received your related submission of additional precinct and polling place changes for the special election.

We carefully have considered the information that you have provided, as well as information provided by other interested persons. According to the 1990 Census, the City of San Antonio has a total population of 935,933 persons, of whom 55.6 percent are Hispanic and 6.8 percent are black. Three-quarters of San Antonio's population speaks Spanish at home, and nearly four out of every ten (37.1 percent) of these Spanish speakers require Spanish-language assistance to participate effectively in elections.

In considering whether the implementation of bilingual procedures satisfy Section 5 of the Voting Rights Act, the Attorney General will pay "particular attention . . . to the requirements of . . . Sections 4(f)(4) and 203(c) . . . of the Act" 28 C.F.R. 51.55 (a); See also Apache County High

School District No. 90 v. United States, Civil Action No. 77-1845 (D.D.C. 1980). The guidelines for the implementation of Sections 4(f)(4) and 203 of the Voting Rights Act state that the test for compliance with regard to bilingual procedures is whether or not the materials and assistance are provided in a way that allows members of the language minority group to be effectively informed of and participate effectively in voting-concerned activities, 28 C.F.R. 55.2(b)(1). We note that the city's bilingual procedures provide that "all election materials will be prepared bilingually."

While the city provided assistance and many materials bilingually for the August 13, 1994, special referendum election, it provided the principal substantive document concerning the referendum, the 2050 Plan, in English only.

The availability of the 2050 Plan in Spanish was critical to the ability of Hispanic voters to participate effectively in the election. Given that the ballot question, as well as the election literature, advertisements, and other information provided to the voters by the city specifically and repeatedly referred to the 2050 Plan, the Applewhite issue was voted upon in the context of the 2050 Plan. In addition, the new Applewhite project could easily have been confused with the 1991 Applewhite project, although the two projects were substantially different. The 2050 Plan contained the only substantive explanation of these differences.

You advise that the city distributed the 2050 Plan in English because it was "important for voters to know the components of the plan of which the project is a part." Because of the importance of the plan, the city took special steps to make it available in English, and distributed hundreds of copies. The city sponsored announcements over local television which specifically referred to the 2050 Plan. These announcements were in English only. Once the city provided the 2050 Plan to the public, it had an obligation to provide it so that all voters would benefit from its distribution, not only those who are proficient in English. The city's failure to do so constituted a violation of the Voting Rights Act.

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

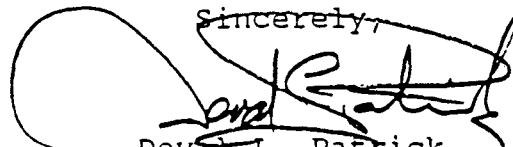
considerations discussed above, I cannot conclude as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the procedures for conducting the August 13th special election.

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 procedures for conducting the August 13, 1994, special referendum election continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

The Attorney General will make no determination at this time with regard to the voting precinct, early voting and polling place changes as they are directly related to the August 13, 1994, special election procedures. See 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the City of San Antonio plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval L. Patrick", written over a horizontal line.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division