



THE GALVESTON
NORTHSIDE
TASKFORCE



August 22, 2013

Dottie Palumbo
City Attorney
City of Galveston
P.O. Box 779
823 Rosenberg
Galveston, Texas 77553
VIA EMAIL and HAND DELIVERY

Re: Objection to changing the election system of the City of Galveston, Texas

Dear Ms. Palumbo,

The most precious right we have as a citizen of the United States is our right to vote. On Thursday, July 11, 2013, some members of the city council including the mayor seemed to suggest they were willing to diminish that sacred right by rushing, if possible, to take advantage of the recent 5-4 Supreme Court decision in *Shelby County, Alabama v. Holder*. They appeared to savor the possibility of changing the current system to a 4-2-1 election system despite the apparent and understandable caution of their election attorney Robert Heath. See Item 14A at <http://galvestontx.swagit.com/play/07112013-562>. It was unclear from the discussion whether the City of Galveston would be attempting another charter amendment election or some other action in May or November, 2014. The future of the voting rights of minority citizens in Galveston appear to once again be threatened but it is unclear how and when the City of Galveston intends to proceed.

BACKGROUND

The letter from the Asst. U.S. Attorney General Thomas E. Perez to the City of Galveston's election attorney, Robert Heath, on October 3, 2011 sets forth a concise history of the current election system.

Prior to 1992, the city was governed by a mayor and six councilmembers, all of whom were elected at large by majority vote for staggered terms. In August 1990, minority plaintiffs filed an action alleging that the city's at-large system violated Section 2 of the Voting Rights Act. *Arceneaux v. City of Galveston*, No. G-90-221 (S.D. Tex.). During the course of the litigation, the city appointed a charter review committee to review and make recommendations for amendments to the city charter. The committee proposed a method of election consisting of four councilmembers elected from single-member districts, two councilmembers elected at large from number positions, and the mayor elected at large ("4-2-1 method of election"). The proposed changes were approved by the voters in a November 5, 1991, referendum election. The city submitted the 4-2-1 method of election for Section 5 review. In 1992, the court granted preliminary relief, enjoining the city's May 1992 municipal election pending the Department of Justice decision regarding the city's 4-2-1 method of election.

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On December 14, 1992 the Attorney General interposed an objection to the 4-2-1 method of election because the city had not met its burden under Section 5 of demonstrating the absence of discriminatory purpose and retrogressive effect.

After the 1992 objection, the parties in the *Arceneaux* suit reached an agreement. On February 16, 1993, the court entered a consent decree which established a method of election and districting plan in which six councilmembers are elected from the single-member districts and the mayor is elected at large. This method of election and districting plan received preclearance under Section 5 for use on an interim basis on April 29, 1993 and for use on a permanent basis on January 27, 1994.

On June 16, 1998, the city submitted numerous amendment to the city charter for Section 5 review. The amendments had been approved by voters in a referendum election. One of the amendments, Proposition 10, provided for a virtual identical change in the method of election for the city council from six single-member districts to four single-member districts with two additional members elected at large to numbered posts. On December 14, 1998, the Attorney General again interposed an objection under Section 5 to those proposed changes because the city had not met its burden under Section 5 of demonstrating the absence of a discriminatory purpose and retrogressive effect. In 2001, the city requested that the Attorney General reconsider and withdraw the December 14, 1998 objection. In support of that request, the city pointed to the 2001 census that indicated Hispanics supplanted African-Americans as the predominant minority group in the city. The city also noted that a Hispanic mayor was elected in 2000, but there was no indication that racial bloc voting was no longer an operative factor in city elections. After a review of this additional information, the Attorney General remained unable to conclude that the city carried its burden of showing that the submitted changes have neither a discriminatory purpose nor a discriminatory effect and declined to withdraw the objection.

On August 11, 2011 the City of Galveston had submitted another request to the Department of Justice to change the election system that was rejected and prompted the history lesson above and the following inescapable conclusion-

A voting change has a discriminatory effect if it will lead to retrogression in the ability of language or racial minorities 'with respect to their effective exercise of the electoral franchise.'" *Beer v. United States*, 425 U.S. 130, 141 (1976). The voting change at issue must be measured against the benchmark practice to determine whether the ability of minority voters to participate in the political process and elect candidates of their choice will be 'augmented, diminished, or not affected by the change affecting voting.'" *Ibid*.

....

Under the existing method of voting, minority voters currently have the ability to elect a candidate of choice in three of the six single-member districts. In contrast, this ability would exist only in two of four districts and in neither of the two at-large positions under the proposed system. Indeed, in the course of our investigation, the city acknowledged that the proposed method of election will decrease the number of minority ability-to-elect districts.

The October 3rd letter from Asst. Attorney General Perez concluded by also noting the City of Galveston had the right to file a law suit seeking a declaratory judgment in federal court in Washington D.C. that the proposed changes did not have the purpose or effect of denying or abridging the voting rights of minority citizens. The City of Galveston has never chosen this ready option.

CURRENT ELECTION SYSTEM

The first 6-1 map was adopted in 1993. The current 6-1 system has had the lines tinkered with over the years but it has followed the mandate of the Voting Rights Act. After the 4-2-1 system was rejected by the Department of Justice in 2011, the City Council considered two 6-1 maps

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identified as O2 and R2. Map R2 was supported by the Collaborating Organizations¹ and O2 was publicly supported by some Anglo council members and their supporters. Map R2 created three minority impact districts and O2 created only two. The violation of the Voting Rights Act was crystal clear. The current 6-1 map was finally adopted after a letter was sent to the City of Galveston by the Collaborating Organizations that suggested a complaint would be filed with the Department of Justice if Map O2 was adopted by the City Council.

The struggle to secure the current map was briefly outlined in an October 24, 2011 letter to the City of Galveston by the Collaborating Organizations and should be repeated.

We have worked individually, with members of the community and our respective organizations, and with each other in good faith to arrive at a fair map that complies with the Voting Rights Act and United States Constitution. We did not consider the incumbency of any current council member since, if reelected, they would only serve one more two year term. We believe any adopted map must be fair for the community for years and many elections beyond the upcoming spring election.

Background

On May 20, 2011 we sent a letter to the Department of Justice objecting to the City of Galveston's fourth attempt to adopt a 4-2-1 modified at-large plan because it was retrogressive and diluted minority voting strength. The Obama Department of Justice notified the City of Galveston on October 3, 2011 that it was not withdrawing the ongoing objection from the Clinton and Bush Departments of Justice.

On October 7, 2011 we sent a letter to the City of Galveston advising your legal counsel of our support for the adoption of Map R by the City Council as the preferred map for the upcoming public hearing and for later adoption and submission for clearance to the Department of Justice.

The City Council held a workshop on the morning of October 13th where its attorney Bob Heath reviewed the process for approving a plan. He suggested the council decide on one plan to submit to the public at a public hearing. During the review there was also some discussion of challenging the fourth Department of Justice rejection of Galveston's attempt to adopt a 4-2-1 plan by filing a law suit in federal court in Washington DC. The discussion ended with a decision to not proceed in federal court. There was also a presentation of Map R wherein Mr. Heath described Map R as:

a good plan...has support of the minority community....about as strong a Hispanic district and about as strong of an African-American district that can be drawn...very compact....and would pass muster with the Department of Justice.

After the presentation of Map R, council members made a slight adjustment to Map R which resulted in shifting about 100 voters in the Channelview neighborhood. The change was of no statistical significance to the racial composition percentages in any district. Then some council members stated a desire to review Map O. The council spent most of the meeting tinkering with Map O and eventually settled on an altered configuration referred to as Map O2. The council concluded its work by then deciding to submit two, rather than one map, to the public-Map R2 and O2.

Discussion

After the 2000 census an attempt was made by the City Council to adopt a 4-2-1 plan. This was attempt number 3. It was rejected by the Bush Department of Justice and the City Council proceeded to redraw the lines for its 6-0-1 single member district system. Those new lines were submitted and approved by the Department of Justice.

¹ The membership of the coalition known as the Galveston County Collaborating Organizations varies depending on the issue. Generally the CO is comprised of: NAACP Galveston Unit 6180, LULAC Galveston Council 151, Galveston County Coalition for Justice, Northside Task Force, Gulf Coast Interfaith, Barbour's Chapel Community Development Corporation, NAACP Mainland Branch Unit 6201, NAACP Dickinson/Bay Area Branch Unit 6280, LULAC Texas City Council 255, and Galveston County Homeless Coalition.

The August 2, 2011 letter from Bob Heath to Department of Justice provided argument and information to support the change to the partial at-large 4-2-1 system. The arguments were rejected for the 4th time. Included in the letter at p.3 was the breakdown of the districts after they were redrawn after the 2000 census. The statistics simply and clearly show there were three over 50% Latino/African-American districts.

Map 2000 (population 57,247 with 44.15% Anglo)

	Anglo	Latino	African-American	L/A-A	Asian/other
#1	21.24	23.72	53.64	77.36	.47/1.93
#2	26.58	24.42	46.43	70.85	.95/1.61
#3	46.14	22.56	19.11	41.67	9.28/2.90
#4	37.23	44.32	16.04	60.36	1.01/1.40
#5	65.27	18.94	9.32	28.26	4.82/1.65
#6	65.35	20.79	9.89	30.68	2.27/1.71

Of course, who ended up being elected in the last decade may have been affected by voter registration, candidate quality, voter turnout and apathy, unforeseen or perceived interruptions and distractions such as weather, voter suppression, etc. Since 2000 Galveston has suffered through Hurricane Ike which contributed to a 2010 population reduction of around 10,000 from 57,247 to 47,743 but an insignificant change in the percentage of Anglos from 44.15% to 45.03%. The other changes of significance was the reduction in the African-American population from 25.19% to 18.63 and increase in the Latino population from 25.77% to 31.26% and the relocation of the Latino and African-American population. These storm induced changes created an additional challenge to drawing a map that would fairly represent the interests of Latinos and African-Americans in Galveston. There was and still is roughly a 50/50 split between Anglos and Latinos/African-Americans.

Map R2 contains three over 50% Latino/African-American districts.

Map R2 (population 47,743 with 45.03% Anglo)

	Anglo	Latino	African-American	L/A-A	Asian/other
#1	17.39	34.56	46.20	80.76	.40/1.45
#2	39.86	33.64	23.41	57.05	.87/2.22
#3	54.94	21.04	12.71	33.75	8.58/2.74
#4	30.72	53.11	13.47	66.57	1.11/1.59
#5	53.18	28.78	11.68	40.46	4.50/1.86
#6	73.33	16.40	5.08	21.48	3.16/2.03

Map O2 only contains two over 50% Latino/African-American districts.

Map O2 (population 47,743 with 45.03% Anglo)

	Anglo	Latino	African-American	L/A-A	Asian/other
#1	17.43	34.55	46.18	80.73	.40/1.45
#2	47.78	30.52	18.05	48.57	1.14/2.50
#3	46.68	24.68	17.93	42.61	8.29/2.42
#4	30.73	53.11	13.49	66.60	1.11/1.56
#5	57.84	25.09	10.62	35.71	4.53/1.93
#6	69.02	19.63	6.16	25.79	3.21/1.98

Hurricane Ike and the subsequent population relocation make it difficult to draw lines reflecting the 2010 population of Galveston and compliance with the Voting Rights Act. Map O2 clearly diminishes the voting strength of Latinos/African-Americans when compared to Map 2000 or Map R2 and thus affects their ability to elect and influence the election of candidates of their choice.

Conclusion

The Department of Justice reminded the City of Galveston in its October 3, 2011 rejection letter that Galveston had the burden of demonstrating the proposed change to a 4-2-1 plan was free of discriminatory purpose and retrogressive effect. The letter stated on page 3:

Under the existing method of election, minority voters currently have the ability to elect a candidate of choice in three of the six single-member districts. In contrast, this ability would exist only in two of the four districts and in neither of the two at-large positions under the proposed system.

We agree with the Department of Justice that under the existing method of election, Latino/African-American voters currently have the ability to elect a candidate of choice in three of the six single-member districts. We believe, in contrast, this ability would only exist in two of six districts under the proposed Map O2. This is the same prohibited retrogression in violation of Section 5 that the Department of Justice rejected ten days before the City Council work session that created Map O2.

We believe Map R2 best reflects the roughly 50% split between Anglos and Latino/African-Americans by creating three districts where Latino/African-Americans have an ability to elect a candidate of choice. We believe it is a fair map for all the reasons articulated by Mr. Heath during the City Council work session on October 13, 2011. Further, we believe Map R2 is the only map presented to the public for consideration that can be submitted without objection and be approved by the Department of Justice.

....

SUMMARY

There is an unrelenting history of attempts to diminish the voting rights of minority citizens of Galveston ever since the *Arceneaux v. City of Galveston* voting rights case was settled in 1992. The recent search for another way during the July 11, 2013 city council meeting is just the next and expected attempt to diminish the voting rights of minority citizens. This effort after the *Shelby County* decision is no surprise given the 20 year history of Galveston.

We agree with the Department of Justice's statement in 2011 that under the existing election system, Latino/African-American voters currently have the ability to elect a candidate of choice in three of the six single-member districts. We believe, in contrast, this ability would only exist in two of the four districts under the proposed 4-2-1 election system and in neither of the two at-large positions under the proposed system. According to Asst. Attorney General Perez the City of Council has admitted the fundamental fact that the 4-2-1 system "will decrease the number of minority ability-to-elect districts."

INQUIRIES

The intent of the majority of the City Council is unclear. It is equally unclear whether the minority community will be able to raise enough money during church services, bake sales, and fund raisers to hire an attorney to fight for their undiminished right to vote in this city. It should also be said it is unclear at this moment whether the NAACP or MALDEF will have an extra lawyer available to protect the voting rights of Galveston's minority citizens. The ranks of

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their staffs are spread so thin these days fighting the racist onslaught of efforts around America to turn the clock back.

What is becoming clear, however, is that Galveston is becoming one of those places in America where there will be a pitched political battle to obtain and maintain equal rights.²

Simple common sense, however, should govern before hundreds of thousands of tax and private dollars are spent and the terrible damaging animosity that will be created by this effort is forced on our community. Our simple common sense compels us to ask that you obtain answers to the following questions before all of us head down this destructive path.

We request you ask and receive answers to these questions from Robert Heath and present the answers to the public. You may have your own questions.

1. Why did the City of Galveston settle the Voting Rights Act case filed against it by the NAACP and accept the elimination of its at-large system for a new 6-1 election system?³

2. If the City of Galveston changes from a 6-1 to 4-2-1 election system and that system reduces the minority impact districts from three to two, and reduces the minority impact percentages in each of those two below the percentages in the current 6-1 system, would that be considered retrogression under the Voting Rights Act?

3. If the City of Galveston adopts an election system after being privately and publicly advised by its attorney that it is retrogressive, would such an action be considered discriminatory under Sec. 2 of the Voting Rights Act?

4. If the COG adopts a 4-2-1 election system after being rejected for Sec. 5 pre-clearance by the Department of Justice under Clinton, Bush and Obama, after being advised by its attorney that it would be retrogressive and considered discriminatory under Sec. 2, would the City of Galveston face losing control of its future elections under Sec. 3 of the Voting Rights Act?

5. How much would it cost to conduct a charter amendment election? How much would it cost to defend a legal challenge to the 4-2-1 election system if it was adopted? If the City of Galveston lost the Voting Rights Act challenge to its 4-2-1 election system, would it also be

² The Northside community in Galveston, historically neglected by the City, is located north of Broadway, from Rosenberg (25th) on the east to approximately 46th Street on the west and includes Ball St (Ave H) as the main corridor and the neighborhoods bounded by Broadway on the south to Market Street on the north. Not far from this neighborhood boundary, on June 19, 1865, Union General Gordon Granger and 2,000 federal troops arrived in Galveston, Texas, to take possession of Texas and enforce the emancipation of its slaves after Granger read the contents of General Order No. 3.

³ Many cities settled Voting Rights Act cases after considering the range and depth of evidence about the city and political leaders and process that would be presented in court. For example, election history, participation on boards and commissions, distribution and use of local tax and federal funds, history of discrimination in schools, major employers, and housing, local ordinances and zoning, formal and informal media treatment of minorities, and other relevant demographic evidence.

required to pay the attorney's fees of the successful lawyers representing the rights of Latino and African-American citizens of Galveston?

6. If the City of Galveston adopts a 4-2-1 election system, can the minority community file a class action law suit seeking damages for the intentional violation of their voting rights under the Voting Rights Act? Will an intentional violation of the Voting Rights Act by City of Galveston subject city council members to individual liability or criminal prosecution?

7. What is your professional recommendation to the City of Galveston?

It is our understanding that many consider the current city council the most dysfunctional in the last 20 years. (Galveston County Daily News, editorial, 7/11/13) Since they have only been in office a little over one year, there is still time to hope. We, however, do not believe the multitude of gaffes, mistakes, and abundance of absurdity should be allowed to affect the voting rights of the minority citizens of Galveston.

Therefore, we request you seek answers and advice from your election attorney to the seven questions we have posed. We ask that you reply to this letter by Labor Day.

CONCLUSION

The City of Galveston is seeking, once again, to return to a partial at-large system. An at large system not too dissimilar from the system challenged by a cadre of NAACP lawyers in the *Arceneaux* case over 20 years ago. Galveston has had the right for the last 20 years to file a lawsuit in federal court seeking relief and permission to use a 4-2-1 system but has never done so. It now seeks to slip through the temporary window provided by the *Shelby County* decision to attack the voting rights of the minority community.

Robert Heath, the City of Galveston's own election lawyer, has already admitted a change to 4-2-1 is retrogressive and will negatively affect the voting rights of the minority population of Galveston.

The majority of the Galveston city council, and of this city, should not attempt to deprive or diminish the voting rights of the minority community of this city, rights they have had to struggle repeatedly to maintain. The decision of the Department of Justice under Presidents Clinton, Bush and Obama should be a persuasive reminder that any attempt by the City of Galveston to attack the voting rights of the minority community in Galveston will be an offense noticed by many off Galveston Island.

Wherefore, for the reasons recited hereinabove, the following individuals and entities sign this letter.

If you have any questions, please direct them to Gulf Coast Interfaith.

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Yours respectfully,

THE GALVESTON COUNTY COLLABORATING ORGANIZATIONS

The Galveston Northside Taskforce

By: *Lillian McGrew*

Lillian McGrew, Chairperson

The Galveston County Coalition for Justice

By: *Leon Phillips*

Leon Phillips, President

Gulf Coast Interfaith

By: *Stephen McIntyre*

Stephen McIntyre, Leader

Joe Compian

Joe Compian, Leader

NAACP, Galveston Unit #6180

By: *David Miller*

David Miller, President

LULAC, Galveston Council #151

By: *Anna Olivares*

Anna Olivares, President

(All Signatures By Permission)

cc:

John Wayne Ferguson, Galveston County Daily News

Harvey Rice, Houston Chronicle