

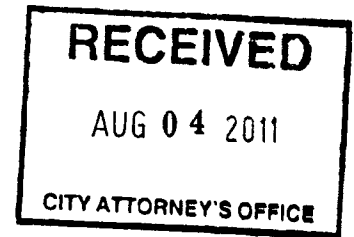
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EXPEDITED CONSIDERATION REQUESTED

August 2, 2011



The Honorable Thomas E. Perez
Chief, Voting Section
Civil Rights Division
United States Department of Justice
Room 7254-NWB
1800 G Street, NW
Washington, DC 20006

Dear Mr. Perez:

I have been directed by the city council of the City of Galveston to request you, pursuant to 28 CFR § 51.45, to withdraw your earlier objection to the City of Galveston's amendment to its city charter that seeks to replace the city's 6-0-1 city council election system with a 4-2-1 system.

Request for Expedited Consideration

The city is drawing districts to be completed prior to the May 2012 election for which candidates may file beginning February 4, 2012. The city must adopt a plan in time to have it precleared by that date. Before it can adopt a plan, it must know whether it must draw four or six districts. Accordingly, the city respectfully requests expedited consideration of this request to withdraw your earlier objection to the city's charter amendment.

BACKGROUND

The City of Galveston currently has a 6-0-1 council district plan with six members of the council elected from single member districts while the mayor is elected at-large. The current system was adopted in settlement of a vote dilution lawsuit, *Arceneaux v. City of Galveston*, No. G-90-221 (S.D. Tex. 1993), and replaced a system in which all members of the council were elected at-large. A copy of the consent judgment is attached as Exhibit A. The 6-0-1 system established by the consent judgment was precleared by the Attorney General. Prior to the settlement of the *Arceneaux* suit, the city proposed to adopt a 4-2-1 system, but on December 14, 1992, the Attorney General interposed an objection to the 4-2-1 plan.

In 1998, the voters approved several amendments to the Galveston city charter including Proposition 10, which established a 4-2-1 election system, and Proposition 11, which directed how the four single-member districts were to be drawn. On December 14, 1998, the Attorney General objected to both Propositions 10 and 11. The Attorney General also objected to Proposition 12, which created a majority vote requirement for election, but he subsequently withdrew that objection.

On December 5, 2001, the City asked the Attorney General to reconsider the objection to Propositions 10 and 11, but on February 4, 2002, he declined to withdraw the earlier objection. In light of subsequent demographic events, the city respectfully requests that the Attorney General withdraw his objection to Proposition 10. A copy of Propositions 10 and 11 is attached as Exhibit B. Exhibit B also includes the language of the charter as it would be amended by the adoption of those propositions. The charter language that would result from withdrawing the objection to Proposition 10 is highlighted. Please note that the request is limited to Proposition 10, which would adopt a 4-2-1 system. While the city would prefer that all the amendments approved by its voters be precleared, it recognizes that Proposition 11 may pose concerns. Proposition 11, which essentially provides that the four districts be drawn in an essentially mechanical way, would prevent the city from considering the location of concentrations of minority population when drawing districts. As this would make it more difficult to draw districts that comply with the requirements of the Voting Rights Act, the city's request is directed to reconsideration of the objection to Proposition 10, which merely converts two of the six single-member district positions on the council to at-large positions.

POST-OBJECTION CHANGES IN CIRCUMSTANCE

Dramatic Demographic Change

In 2008 Hurricane Ike made landfall at Galveston and resulted in massive devastation. The storm destroyed many housing units, extensively damaged the city's infrastructure, and caused hundreds of millions of dollars property damage to the University of Texas Medical Branch, which is the city's major employer, as well as significant damage to other sources of employment. In the aftermath of the storm, Galveston, which is wholly located on an island in the Gulf of Mexico, lost population even though most of the state experienced substantial growth. Specifically, the population fell from about 57,000 in 2000 to 47,000 in 2010. The extent and location of the demographic change can be seen in the following charts:

CITY OF GALVESTON 2000 TOTAL POPULATION

District	Persons	Deviation	Hispanic % of Total Population	Non-Hispanic Anglo % of Total Population	Non-Hispanic Black % of Total Population	Non-Hispanic Asian % of Total Population	Non-Hispanic Other % of Total Population
1	9,115	-4.46%	23.72%	21.24%	53.64%	0.47%	0.93%
2	9,172	-3.87%	24.42%	26.58%	46.43%	0.95%	1.61%
3	9,608	0.70%	22.56%	46.14%	19.11%	9.28%	2.90%
4	9,615	0.78%	44.32%	37.23%	16.04%	1.01%	1.40%
5	9,783	2.54%	18.94%	65.27%	9.32%	4.82%	1.65%
6	9,954	4.33%	20.79%	65.35%	9.89%	2.27%	1.71%
Totals	57,247		25.77%	44.15%	25.19%	3.17%	1.71%

CITY OF GALVESTON 2010 TOTAL POPULATION

District	Persons	Deviation	Hispanic % of Total Population	Non-Hispanic Anglo % of Total Population	Non-Hispanic Black % of Total Population	Non-Hispanic Asian % of Total Population	Non-Hispanic Other % of Total Population
1	7,112	-10.62%	32.78%	31.66%	32.87%	0.97%	1.72%
2	7,050	-11.40%	33.09%	28.21%	36.00%	0.57%	2.13%
3	7,697	-3.27%	24.22%	46.99%	17.90%	8.42%	2.47%
4	8,823	10.88%	48.68%	34.77%	13.42%	1.24%	1.89%
5	7,314	-8.08%	23.53%	58.78%	11.03%	4.73%	1.93%
6	9,747	22.50%	24.43%	64.38%	6.67%	2.74%	1.79%
Totals	47,743		31.26%	45.03%	18.63%	3.10%	1.98%

As reflected in a comparison of the two tables:

- All parts of the city lost population in the past decade
- The loss of African-American population has been especially dramatic, especially in District 1 and, to a somewhat lesser extent, in District 2, the two districts with the highest concentration of African-American population;
- Because of the significant decrease in the African-American population it no longer appears to be possible to draw two predominantly African-American council districts;
- Following the statewide trend of high growth in the Hispanic population, there has been Hispanic growth; however, the Hispanic population remains relatively dispersed throughout the city; and

- Because of the dispersion of the Hispanic population, combined with an adult non-citizenship rate of 28.34 percent,¹ it is difficult to draw a district with a majority of Hispanic voters.

Three years after the storm, the demographic effect remains significant. Because of those demographic changes, a transition to an electoral system that includes both single-member and at-large council positions will not have the same effect on the ability of minority voters to elect candidates of their choice as it might have had under the demographic facts as they existed in 2000. The biggest impact of the demographic change has been on the African-American community. In 2000, African-Americans composed more than a quarter of the city's population. Because most of that population was geographically concentrated, it was possible to draw two of the six council districts in which African-Americans made up about half of the districts' population. By 2010, though, the African-American population had declined so that it made up only 18.5 percent—slightly more than a sixth—of the city's population. Rather than constituting a majority or near-majority in two equipopulous districts, African-Americans constituted only about a third of the population in those districts, both of which were now significantly underpopulated. In 2010, which was the only post-storm election, the African-American incumbents in what had been the two largely African-American districts faced challenges from Anglo candidates. Both elections were decided by a handful of votes with the African-American incumbent winning in District 2 and the Anglo challenger winning in District 1.

While the 2000 demographic composition of the city permitted the creation of two predominantly African-American districts in a six-district plan, given the dramatic change in the city's population, it apparently is no longer possible to support a second predominantly African-American district. Thus, to the extent that a change from six to four single-member districts would be retrogressive because it would preclude creation of a second African-American district, that is no longer the case.

While the Hispanic share of the city's population was roughly equal to the African-American share in 2000, by 2010 it was substantially larger.² As indicated by the percentage of Hispanics in each of the city's six districts in both 2000 and 2010, the Hispanic population is dispersed throughout the city, which makes it much more difficult to draw districts with Hispanic majorities. Because of the dispersion of Hispanics, it has not been possible to draw Hispanic majority districts. As shown by the tables reflecting the 2000 and 2010 population of the city's existing districts, District 4 is the only district with a Hispanic plurality, although when respective adult citizenship rates are considered, even that district likely slips slightly below a

¹ The rate is computed from Table PCT 44 using Summary File 4 in the 2000 Census. No attempt was made to compute rates from the American Community Survey. To obtain ACS data for Galveston it is necessary to use multi-year data, which would include both pre- and post-like responses. Because the survey bracketed such a significant demographic shift, we have not used it.

² The Hispanic share of the potential voting population is somewhat smaller than its share of the total population as it has a higher proportion of persons under the age of eighteen and a lower proportion of adult citizens than the Anglo and African-American population. Nevertheless, it still exceeds the African-American population in potential voting strength.

The Honorable Thomas E. Perez

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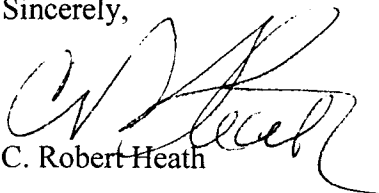
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plurality. As a result, historically any Hispanic electoral success had to come in districts where Hispanics were not the dominant voting bloc. While Hispanic candidates have not been uniformly successful, they have been able to compete with Anglo candidates, winning some races, including three city-wide contests for mayor. In 1998, 2000, and 2002, a Hispanic candidate was elected mayor in an at-large election. The 2000 Hispanic percentage of total population represented only about 26 percent of the city's total population. Additionally, there were two Hispanic district council members during the decade of the 90s, both from non-Hispanic majority districts. In 2006, Juan Pena was elected to the council from District 3, which had a Hispanic population of only about 22 percent. While District 4 has had the largest concentration of Hispanic population, it did not elect a Hispanic candidate until 2010. The bottom line is that Hispanics have shown an ability to be elected in areas without Hispanic majorities, which due to the significant dispersal of Hispanic population in the city is likely to be the situation in any district that could be drawn in either a four-district or a six-district plan. A copy of the past ten years' election returns is attached as Exhibit C.³ The returns are preceded by a chart showing the candidates' race and ethnicity. Returns for prior years can be found in Submission 2001-3880.

The city believes, given the voting history and the demographic changes in the city, that moving to a 4-2-1 system as provided by Proposition 10 in the 1998 charter election would not be retrogressive. Indeed, moving to a 4-2-1 system would give minority voters, along with all other voters, the ability to vote on four members of the council (one SMD member, two at-large members, and the mayor) rather than only two (one SMD member and the mayor). As the city will be making important decisions regarding the city's post-storm redevelopment and reconstruction, such broader input and community-wide focus is important.

While the city desires to see the will of the voters expressed in the 1998 charter amendment implemented, as a matter of completeness, it points out that that is not a universal sentiment in the city and some groups representing minority organizations have expressed a different position by letter to the Department. A copy of that letter is enclosed as Exhibit D.

Sincerely,



C. Robert Heath

³ Returns for some years were available only from the city's canvass ordinances which do not show the returns by each polling place. The inability to recover precinct-by-precinct returns for those years is due to a computer malfunction with the county election department.