

Jack W. Hoffman, Esq.  
Deputy General Counsel  
State Board of Elections  
State of New York  
99 Washington Avenue  
Albany, New York 12210

SEP 18 1981

Dear Mr. Hoffman:

This is in reference to the submission of Chapters 1007 through 1013 (amendments to Sections 13-102, 104, 106, 108, 110, 112, and 114 of the election law), submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on September 16, 1981. In accordance with your request expedited consideration has been given this submission pursuant to Section 51.32 of the Procedures for the Administration of Section 5 (46 Fed. Reg. 877).

The Attorney General does not interpose any objections to the changes set forth in the amendments to Sections 13-102 and 104 of the election law as they pertain to New York, Kings, and Bronx Counties, New York. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day period.

With regard to the provisions of Section 13-112, we note that Richmond County is not a covered jurisdiction within the meaning of Section 5 of the 1965 Act and therefore, the Attorney General will make no determination with regard to Section 13-112.

With respect to the provisions of Sections 13-114 of the amendments to the election law, it appears that this Section sets the primary date for all elections not otherwise specified in the other revisions being submitted. To date we have been advised of only one election which would be governed by the provisions of Section 13-114, namely, the election of Democratic Party County Committee persons in New York County. It is our understanding that the candidates for this office had previously qualified for office on the basis of election district lines which were adopted in 1981 as a result of the councilmanic redistricting. Even though these election districts were submitted for preclearance under Section 5 on September 10, 1981, the City of New York advised the Department of Justice, on September 11, 1981, that the changes in election districts which were submitted for Section 5 preclearance on September 10, 1981, would not be implemented for the September 1981 elections and, based on these representations, these changes in election districts have not been reviewed for Section 5 preclearance for the September 22, 1981, election. In the absence of such preclearance and in accordance with Section 51.20(b) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 875), the Attorney General is unable to make a determination on your submission of the provisions of Section 13-114 at this time.

Similarly, it is our understanding that candidates also qualified for office for positions which are the subject of the changes set forth in Sections 13-108 and 13-110 on the basis of election district lines which, for the same reasons described in the preceding paragraph, have not received preclearance under Section 5 of the Voting Rights Act. Thus, in accordance with Section 51.20(b) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 875) the Attorney General likewise is unable to make a determination at this time on your submission of the provisions of Sections 13-108 and 13-110.

With regard to the provisions of the amendments to Section 13-106 of election laws, we note particularly that under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.39(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). From our review of the amendments to Section 13-106, which authorize the holding of an election for borough-wide council contests on September 22, 1981, it appears that two changes in voting subject to the preclearance provisions of Section 5 have occurred. One is the

change in date from September 10, 1981; the other is the bifurcation of councilmanic elections which would result from conducting the at-large contests separate and apart from the district contests. In this regard, we note that the City of New York presently is in the process of completing a submission of its new councilmanic districts for review by the Attorney General under Section 5. In the meantime, however, those district lines are unenforceable under the Voting Rights Act. We are also aware of the litigation in Herron v. Koch, wherein the three-judge court enjoined the holding of the district council elections on September 22, 1981, absent the required preclearance.

Because of the circumstances which surround the city's 1981 primary election effort, there appears to be a significant amount of confusion among voters regarding which elections will be conducted on September 22, 1981. In this regard, we note that the cancellation of the council election, including the borough-wide seats, has been well-publicized, that the holding of those elections was expressly excepted from our preclearance last week of September 22, 1981, as a special primary date, and that city officials have previously stated their intention not to conduct the at-large council elections on September 22.

We have received a number of complaints that the addition of the at-large seats to the ballot at this late date would have a detrimental impact upon the minority vote in the areas covered by Section 5 of the Voting Rights Act. We have been provided no information to demonstrate that this change will not have such an adverse impact on the ability of the minority community to participate effectively in the election of the at-large seats. Given the short time remaining before the election, we are satisfied that the addition of the borough-wide seats will add significantly to voter confusion and that such confusion will adversely affect the minority vote. Accordingly, we are unable to conclude, as we must under Section 5, that a detrimental impact such as has been alleged will not occur.

In the same context, we have received information that the various changes in the election schedule which have occurred to date have not been publicized in the Spanish language community to the same extent as publicized in other communities. Thus, the addition of the at-large seats to the ballot at this late date may have a uniquely disparate impact upon Spanish-speaking voters.

In light of the considerations discussed above, therefore, I cannot conclude, as I must under the Voting Rights Act, that the submitting authority has satisfied its burden of demonstrating that the addition of the at-large councilmanic seats to the September 22, 1981, election would not have a discriminatory effect on minority voters. For that reason, I must, on behalf of the Attorney General, object to the change embodied in the amendments to Section 13-106 of the election law.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change neither has 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, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the change embodied in Section 13-106 legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action New York plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division