EXHIBIT 20

CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD
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ADVISORY OPINION 2008-3
Term Limits Use of Position

SUMMARY: Members of the City Council and the Public Advocate will not violate Charter Chapter 68, the City's conflicts of interest law, by participating in the legislative process in relation to the modification, extension, or abolition of term limits, including but not limited to voting for or against any such changes.

OPINION OF THE BOARD

The Conflicts of Interest Board (the "Board") has received inquiries from Public Advocate Betsy Gotbaum and City Council Members Bill de Blasio and Letitia James, through their attorneys,[1] as well as from the Council itself, asking whether, consistent with the provisions of Chapter 68 of the City Charter, the City's conflicts of interest law, Council Members and the Public Advocate may participate in the consideration of currently-pending legislation to alter the City Charter's term limits provisions, Charter Sections 1137 and 1138, by supporting or opposing, and ultimately voting upon, that legislation. For the reasons set forth below, the Board concludes that they may.

[1] The subjects of this opinion have consented to the use of their names and other identifying information. See Charter § 2603(c)(3).

Background

Charter Sections 1137 and 1138 currently limit certain City elected officials, including Council Members, the Public Advocate, the Mayor, and Borough Presidents, to serving no more than two terms; these provisions were enacted as the result of referenda approved by the voters. A bill (Int. No. 845) (the "Bill") has recently been introduced in the City Council to amend these provisions to permit elected officials to serve a maximum of three terms. The Board is advised that, as of this writing, the Council has scheduled committee hearings on the Bill for October 16 and 17, 2008. The Board is also advised that Mayor Bloomberg has publicly supported enactment of the Bill and has said that he will sign it if it is passed by the Council.

The Board has further been advised that Ms. Gotbaum's second term as Public Advocate ends next year, so that under current law she may not run for re-election in the 2009 municipal elections. On the consent of the Council Speaker, Ms. Gotbaum presides over the City Council. The Board is further advised that Mr. de Blasio's second Council term ends next year; that he, too, is therefore barred by current law from seeking re-election in 2009; that he is contemplating running for Brooklyn Borough President in 2009 but would be eligible to run for re-election as a Council Member if the Bill becomes law; and that the incumbent Borough President would also be barred by current law from running for re-election in 2009 but would be eligible to seek re-election if the Bill becomes law. Finally, the Board is advised that Ms. James is completing her first term as a Council Member; that she is eligible under current law to run, and is considering running, for re-election in 2009; that, in contrast, the majority of her fellow Council Members are barred by current law from running for re-election in 2009; and that if the Bill becomes law, and

if Ms. James is re-elected in 2009, she would be eligible, and might choose, to seek a third term thereafter.

Accordingly, Council Members de Blasio and James and Public Advocate Gotbaum, and the Council itself, have requested the Board's advice on whether, as a result of the introduction of the Bill, Council Members and the Public Advocate were to take actions as public servants to participate in the Council's consideration of the Bill, including supporting or opposing it and voting on its adoption, they would violate the City's conflicts of interest law, and in particular Charter Sections 2604(b)(2) and (b)(3). Counsel for Council Members de Blasio and James and Public Advocate Gotbaum has also suggested that, in so doing, they might violate Board Rules Section 1-13(d), which prohibits public servants from intentionally or knowingly aiding, inducing, or causing another public servant to violate any provision of Charter Section 2604.

Relevant Law

Charter Section 2604(b)(2) prohibits a public servant from engaging in "any business, transaction or private employment, or having any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties."

Section 1-13(d) of the Rules of the Board provides that it shall be a violation of Charter Section 2604(b)(2) for a public servant to, among other things, "aid, induce or cause" another public servant to "intentionally or knowingly" violate any provision of Section 2604.

Charter Section 2604(b)(3) prohibits a public servant from using or attempting to use his or her position as a public servant "to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or

firm associated with the public servant." Charter Section 2601(5) defines those "associated" with a public servant to include a spouse, domestic partner, child, parent, or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.

Charter Section 2604(b)(1)(a) provides as follows:

"1. A public servant who has an interest in a firm which is not prohibited by subdivision a of this section, shall not take any action as a public servant particularly affecting that interest, except that (a) in the case of an elected official, such action shall not be prohibited, but the elected official shall disclose the interest to the conflicts of interest board, and on the official records of the council or the board of estimate in the case of matters before those bodies."

Discussion

At the outset the Board emphasizes that it expresses no view whatsoever on the merits or lack of merits of term limits or the Bill, nor does the Board express any view on whether an extension, if any, should be made by local law or by a referendum or State legislation. The Board limits its advice in this Opinion to the question posed, namely, whether actions taken by Ms. Gotbaum, Ms. James, Mr. de Blasio and other Council Members to support or oppose the Bill would contravene Chapter 68, that is, the conflicts of interest provisions, of the City Charter.

Because the Bill, if enacted, would permit many current City elected officials, including Ms. Gotbaum, Ms. James, Mr. de Blasio, and other Council Members, to seek an additional four-year term that the current law denies them, it would, to that extent, arguably confer a "benefit"

upon them. However, for the reasons set forth below, it is the Board's view that their official actions in participating in a legislative process that might yield them this arguable benefit would *not* confer upon them any "private or personal advantage" within the meaning of Charter Section 2604(b)(3), nor would it constitute a "private interest" in conflict with the proper discharge of their official duties in violation of Charter Section 2604(b)(2). Indeed, the Board believes that it is squarely *within* the proper discharge of Council Members' official duties as legislators (and, in Ms. Gotbaum's case, as an elected official whose duties include presiding over the Council) for them to vote upon, and otherwise participate in the legislative process regarding, a bill lawfully pending before the Council. Accordingly, these elected officials, and indeed any elected official of the City, **will not violate Chapter 68** by participating in this legislative process.

The Board first notes that the framers of current Chapter 68 did not intend to "define the full scope of ethical behavior for public servants" but, rather, only to identify "a definable and crucial subset of ethical behavior." Report of the 1986-1988 Charter Revision Commission, Volume II, p. 148. This crucial subset concerns conflicts between public servants' official duties and, in the main, their *private, financial* interests (and those of their "associates"), not their political interests in serving as public officials or in the terms and conditions of that service. Accordingly, while term-limited elected officials may have a personal political interest in the Bill's outcome, that interest does not fall within the "definable and crucial subset" of Chapter 68 that would disqualify them from participating in consideration and possible enactment of the proposed legislation.

A second tenet that underlies Chapter 68 is the recognition that, in a democratic system of government, elected officials are charged by their constituencies with fulfilling certain basic

duties – and that, in the case of legislators, such as Council Members, there is no duty more fundamental to their office than the obligation to vote upon pending bills lawfully before them. Thus, Charter Section 2604(b)(1) expressly permits Council Members (and other elected officials) to take actions "particularly affecting" their private financial investments in private firms, provided only that they disclose their private interests to the Board and, in the case of Council Members, "on the official records of the council." This provision clearly stands for the proposition that the Charter disfavors disqualifying elected officials from their core legislative function of voting.

Consistent with this underlying tenet, the Board has permitted Council Members to take actions that are intrinsic to their role as elected representatives, but might further their personal financial interests, so long as those financial interests were fully disclosed. Thus, for example, in Advisory Opinion No. 94-28, the Board permitted a Council Member to propose and support legislation (both City and *State* legislation) that could directly benefit a real estate developer with whom the Council Member had a financial relationship. In so doing, the Board noted that the "Charter recognizes this unique function of elected officials in Charter Section 2604(b)(1)(a), which provides that an elected official may take an action as a public servant which affects an interest he has in a firm, provided that the elected official discloses such interest to the Board and on the records of the Council." *Id.* at 5.

So too here, voting on the term limits Bill is squarely within the "unique function" of elected legislators that the framers of Chapter 68 did not mean to impede. If Council Members are not prohibited by Chapter 68 from voting on legislation that affects their private financial interests, so long as those interests are disclosed, *a fortiori* they cannot be prohibited from voting

on legislation that affects the terms and conditions of their service as Council Members. And such an "interest" does not require any specific act of "disclosure," because it is plainly apparent on the face of the legislation.[2]

Indeed, the courts have recognized that it is squarely within the authority of the City Council to enact laws regarding term limits, and that a voter referendum under City Charter Section 38 or Municipal Home Rule Law Section 23(2) is not required to enact such laws. *See Golden v. New York City Council*, 305 A.D. 2d 598, 762 N.Y.S. 4102d 410 (2d Dep't 2003). Given this judicial authority, to hold that all Members of the Council who would arguably benefit by being enabled to run for another term are disqualified by Chapter 68 from voting on such a law would deny to the people's elected representatives one of the powers afforded them by State and local law. [3]

The Board precedents cited by counsel for Council Members de Blasio and James and Public Advocate Gotbaum are fully consistent with both of these tenets underlying Chapter 68. Thus, for example, the Board has found violations of Chapter 68 where a public servant supervised a person with whom the public servant had a private financial relationship, a violation

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[2] It is nevertheless worth stating that the disclosure requirement of Charter Section 2604(b)(1)(a) clearly does not apply to any Council Member's vote on the Bill. Here, the bill to extend term limits does not at all relate to any Council Member's "interest in a firm," much less "particularly affect" any such interest.

[3] By the same token, the Board rejects the suggestion of counsel for Council Members de Blasio and James and the Public Advocate that the members of this Board are disqualified from rendering a valid and objective opinion on the question posed herein, simply because they were appointed by the Mayor (with the consent of the Council) and could be re-appointed by the Mayor were he to be re-elected for another term. There is no basis for concluding that the Charter, having established the Board as a body so appointed, bars the Board from discharging its duty to construe Chapter 68 in matters involving the interests of the Mayor and the Council Members. The six-year terms which Board members serve, which are longer than the terms of any Mayor or Council Member, address the issue of the relationship between the Board members on the one hand and the Mayor and Council Members on the other.

of the express terms of Charter Section 2604(b)(14) (*COIB Case No. 2005-442*); used City letterhead for the public servant's personal affairs, again in plain violation of Charter Section 2604(b)(2) as interpreted in Board Rules Section 1-13 (*COIB Case No. 2008-501*); acted on a matter that would benefit a not-for-profit that the public servant served as a paid consultant, again a textbook violation of Charter Section 2604(b)(3) (*Advisory Opinion No. 94-17*); or engaged, on City time, in such partisan political activity as distributing political campaign material, also a plain violation of Board Rules Section 1-13 (*Advisory Opinion No. 95-24*). In each one of these cases, the interest served by the public servant's official actions was a *personal, private* interest, not an interest in the terms and conditions of his or her public office, and in none of them was the public servant an elected official expressly discharging the core duties for which he or she was elected.

In contrast with these violations of definable, and defined, standards relating to personal, private interests, an interpretation of Chapter 68 that would prohibit elected officials from considering or voting on a bill modifying or extending (or even abolishing) term limits would extend the scope of Chapter 68 far beyond any workable interpretation of the law. If Council Members voting on a bill to extend their permissible terms were held to be unlawfully using their positions to obtain a "financial gain" or "other private or personal advantage" in violation of Charter Section 2604(b)(3), or to be acting "in conflict with the proper discharge of [their] official duties," in violation of Charter Section 2604(b)(2), it must follow that they could not vote on *any measure* affecting the terms and conditions of their public service as Council Members. So, for example, they would likewise violate the law by voting on pay raises for themselves – a bill that the Council in fact recently passed, without (so far as the Board is aware)

anyone suggesting that the Council Members violated Chapter 68 by voting for that measure. Similarly, if Council Members cannot vote on term limits, they would likewise be prohibited from voting to limit the amount of campaign contributions that they may receive, and concomitantly to permit certain contributions (again, a bill that the Council recently passed); from voting to limit the amount of gifts that they may receive from lobbyists, and to permit certain gifts (also a recently passed bill)[4]; or even from voting to purchase more comfortable chairs for the Council chamber, or to give City Hall a new paint job.[5] In addition, the logic of the notion that Chapter 68 prevents Council Members from voting to extend term limits also suggests that elected officials may never act on matters properly before them if their actions would have implications for their personal political prospects; such a conclusion would bring democratic government to a halt.

A review of analogous authorities in other jurisdictions supports the Board's conclusion. For example, while cases challenging determinations by legislators to increase their own salaries often turn on the interpretation of legislation specific to that question, in the absence of such specific legislation, it has been held that general conflicts of interest laws do not prohibit such action. The following language of the Court of Appeals of Ohio, Fifth District, in a decision overturning an opinion of the Ohio Ethics Commission, is instructive:

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[4] While the recently enacted bills with respect to campaign contributions and gifts from lobbyists might be described as yielding a "disadvantage" to most if not all Members of the Council, as noted, the legislation also permits certain contributions and gifts, and the act of voting on those bills surely implicated the interests of Council Members – which would also be implicated if the Council were to vote on legislation relaxing or repealing the restrictions of the pay-to-play or lobbyist gift laws

[5] Concluding that Chapter 68 precludes elected officials from taking action to extend term limits or otherwise improve the conditions of their offices would also have implications for appointed officials, who would likewise presumably be precluded from requesting a raise, applying for a promotion or for another City position, or seeking reappointment.

> "The act of voting a pay raise, even for the benefit of oneself, cannot be considered the acceptance of something of value that will influence one's public actions, substantially, improperly or otherwise. It is the act of a pay raise and the potentially self-serving nature of it that may be found to be offensive but not pursuant to this statute. The voters will have the ultimate say as to the propriety of the timing of the pay raise."

Coleman. v. City of Canton, No. 1997CA00303, 1998 WL 401026, at *3 (Ohio Ct. App. May 4, 1998).

So, too, with term limits legislation. A legislator's act of voting for, or against, extending his or her own ability to seek another term cannot be considered either using the legislator's office to "obtain any financial gain . . . or other personal or private advantage" for the legislator (Charter Section 2604(b)(3)); nor can it be considered an act "in conflict with the proper discharge of" the office of legislator (Charter Section 2604(b)(2)).[6] And if the electorate believes there is something unseemly or even outrageous in such actions, then (in the words of *Coleman, supra),* "the voters will have the ultimate say" – because, in the final analysis, the Bill does not guarantee any public official a third term; it would merely allow the voters to decide whether another term is merited. That is the democratic system our State and local laws have erected – and nothing in Chapter 68 disables that system.[7]

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[6] Nor, by extension, would the Public Advocate's participation in that same legislative process violate either of these Sections.

[7] Because the act of voting on lawful legislation is thus so clearly *within* Council Members' official duties, the Board need not decide whether any actions taken, or reported to have been taken, by any member of the Executive Branch in regard to the term limits issue have violated or will violate Chapter 68; rather, the Board is convinced that, simply by supporting and voting on a Bill properly before the Council, a Council Member cannot be held to have "aid[ed], induce[d] or cause[d]" any Executive Branch actions in arguable violation of Board Rules Section 1-13(d)(1).

Conclusion

Members of the City Council and the Public Advocate will not violate Charter Chapter 68, the City's conflicts of interest law, by participating in the legislative process in relation to the modification, extension, or abolition of term limits, including but not limited to voting for or against any such changes.

/s/

Steven B. Rosenfeld
Chair

Monica Blum
Kevin B. Frawley
Angela Mariana Freyre
Andrew Irving

Dated: October 15, 2008

EXHIBIT 21

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

July 1, 2002

Honorable John M. McKay
President of the Florida Senate
Honorable Tom Feeney
Speaker of the Florida House of Representatives
404 Monroe Street
Tallahassee, Florida 32399-1100

Dear President McKay and Speaker Feeney:

This refers to House Joint Resolution 1987 (2002), which provides for the redistricting plan for the House of Representatives of the State of Florida, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on May 1, 2002; supplemental information was received through June 13, 2002.

We have considered carefully the information you have provided, as well as census data, comments, and information from other interested parties. As discussed further below, I cannot conclude that the state's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2002 redistricting plan for the Florida House of Representatives.

The 2000 Census indicates that the state has a total population of 15,982,378, of whom 2,294,672 (14.4%) are black persons and 2,682,715 (16.8%) are Hispanic. Florida's voting age population is 12,336,038, of whom 1,560,928 (12.7%) are black persons and 1,980,176 (16.1%) are Hispanic. One of the most significant changes to the state's demography has been the increase in the Hispanic population. Between 1990 and 2000, the Hispanic share of the state's population increased from 12.2 to 16.1 percent.

Under the Voting Rights Act, a jurisdiction seeking to implement a proposed change affecting voting, such as a redistricting plan, must establish that, in comparison with the status quo, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." Beer v. United States, 425

U.S. 130, 141 (1976). In addition, the jurisdiction must establish that the change was not adopted with an intent to retrogress. Reno v. Bossier Parish School Board, 528 U.S. 320, 340 (2000).

The constitutional requirement of one-person, one-vote mandated that the state reapportion the house districts in light of the population growth since the last decennial census. The Florida House of Representatives consists of 120 members elected from single-member districts to two-year terms. Under the existing plan, there are three districts in the five covered counties that are majority minority in total and voting age population. District 102 has a majority Hispanic population and Districts 55 and 59 have majority black populations.

The proposed plan maintains the two districts in which black persons are a majority of the population, but eliminates the majority Hispanic district, which existed in a portion of Collier County. The total Hispanic population in District 102/101 (the district becomes 101 in the proposed plan) was reduced from 72.8 to 29.6 percent, a drop of 43.2 percentage points. The Hispanic voting age population of the district decreased from 74.4 to 27.5 percent, a drop of 46.9 percentage points. The percentage of Hispanic registered voters declined from 61.9 to 12.5 percent, a drop of 49.4 percentage points. Within the context of electoral behavior in the district and the availability of alternative redistricting plans, the state has not met its burden that this reduction will not result in a retrogression in Hispanic voters' effective exercise of their electoral franchise, or that any retrogression was unavoidable.

Of the 16 states covered by the Act's special provisions, seven have partial coverage. In those states, preclearance is required only for changes that affect one or more covered counties or other subjurisdictions. Johnson v. De Grandy, 512 U.S. 997, 1001 n.2 (1994)("[f]ive Florida counties, but not Dade County, are subject to preclearance"); United Jewish Organizations of Williamsburgh, Inc. v. Carey, 430 U.S. 144, 148-149 (1977) (changes had to be submitted "insofar as [they] concerned [the covered] Counties"). In partially covered states, however, statewide changes in voting procedure, that directly affect voting in covered areas, must be precleared under Section 5.

In particular, the state fails to establish its claim that Collier Hispanic voters do not presently elect the candidates of their choice in benchmark District 102, so that their admitted inability to do so in proposed District 101 is not retrogressive

within the meaning of Section 5. In this instance, benchmark plan District 102 was in fact a district in which Hispanic residents could elect a candidate of choice. For example, our investigation has found substantial information that Hispanic voters in District 102 vote for Hispanic candidates when they have the opportunity and that the Anglo community does not support Hispanic candidates. Further, it appears the benchmark district united several communities of interest. The state's experts in Martinez v. Bush, No. 02-20244-CIV (S.D.Fla.)(three-judge court) noted that there are extensive communities of interest joining Collier and Miami-Dade Counties. Not only did these experts find communities of interest among the Hispanic populations of the two counties, but they found common interests in growth, water management, agriculture, and fishing.

Given the area's demographics, the state was required to extend the district to the east, outside of Collier County, to achieve the necessary population to comply with the one-person, one-vote command of the Fourteenth Amendment. Reynolds v. Sims, 377 U.S. 533 (1964). If the state chose to cross into Miami-Dade County, as it did in the previous redistricting, the result would be that Hispanic voters in Collier County would continue to enjoy the effective exercise of their electoral franchise. If the state chose to cross into Broward County, as it does under the proposed plan, that ability is eliminated. Because the plan eliminates that ability, it is retrogressive. Beer v. United States, supra, at 141.

The benchmark for statewide redistricting plans in partially covered states is the level of minority voting opportunity in districts that are a part of a Section 5 covered county. Cf. Lopez v. Monterey County, 525 U.S. 266, 284 (1999) ("Section 5, as we interpret it today, burdens state law only to the extent that that law affects voting in jurisdictions properly designated for coverage"). Here the state has not proposed to meet its Section 5 obligations by affording to Hispanic voters in other covered counties an opportunity as great as the one afforded to Collier County Hispanics in existing District 102. Therefore, since the benchmark plan contains a majority Hispanic district, which includes Collier County, that level of opportunity for Hispanic voters in that county must be preserved in order to avoid retrogression.

The state presents three arguments against an objection in this instance. Two of the three relate to the state's status as a partially covered state, while the third does not. The arguments are: (1) that Florida should be allowed to compensate elsewhere in the state for a retrogressive effect within one or

more of the covered counties; (2) that any retrogression is cognizable under Section 5 only if it can be cured entirely within the covered counties; and (3) that the retrogression was unavoidable because of other statutory or constitutional considerations. We address each in turn.

First, the state seeks to use a statewide increase in the number of districts in which Hispanic voters can elect a candidate of choice to compensate for any retrogression that occurs in covered counties. This suggested approach would require a Section 5 review and assessment of all districts within a state, even where the statutory formula only identified individual counties for coverage. This is contrary to the plain meaning of Congress' coverage determinations and is an approach we must therefore reject.

The state next contends that an increase in the number of covered-county minority residents, who are placed together in proposed District 101, is non-retrogressive, even if the Hispanic voters in that district as a whole have less ability than they had in the benchmark District 102 to exercise their franchise effectively. Collier County does not have sufficient Hispanic population to provide for a majority Hispanic district by itself. Therefore, in order to avoid retrogression as to Hispanics in proposed District 101 compared to existing District 102, the drafters of the house plan would have had to use Dade County (as did existing District 102) and not Broward County (as does proposed District 101) as the source for the non-Collier County population of that district.

The state contends that forcing it to combine Collier County with Miami-Dade County instead of Broward County would effectively require the submission of non-covered voting changes for preclearance. Under Section 5, however, the Department is required to determine how a proposed change -- including a statewide change -- affects minority voters within a covered county. Our analysis here only goes to the effect of the change within Collier, and on that county's minority residents. The configuration of proposed District 101 comes under Section 5 scrutiny only so far as is necessary to determine whether the ability of minority groups in the covered county "to participate in the political process and to elect their choices to office is augmented, diminished, or not affected by the change affecting voting." H.R. Rep. No. 196, 94th Cong., 1st Sess. 60 (1975). The import of the state's argument is that any portion of a district which lies outside a covered county is not subject to Section 5 review, even if it is the total configuration of the

district that determines its effect on minority residents of the covered county.

The state's final argument is that the requirement to draw a majority Hispanic district, partly in Collier County, would violate Section 2 of the Voting Rights Act because the creation of such a district would pack Hispanic voters in Miami-Dade County into ten districts, where a fairly drawn plan would result in eleven districts. Furthermore, as we understand the state's contention, drawing a majority Hispanic district in Collier County while maintaining eleven majority-Hispanic districts statewide could not be done without violating the equal protection principle of Shaw v. Reno, 509 U.S. 630 (1993). We are informed, however, that alternative plans exist that demonstrate that it is possible to devise a majority-Hispanic district that includes Collier County, while maintaining at eleven the total number of south Florida house districts in which Hispanic voters can elect a candidate of choice. Moreover, as stated above, the state concedes that there are significant communities of interest between Miami-Dade and Collier Counties that are respected by benchmark District 102. Therefore, race need not be the predominant factor in drawing such a district.

In sum, the clear effect of District 102/101 can be measured by the ability of Collier County Hispanic voters to elect their candidate of choice in the benchmark, and the fact that the drop in Hispanic population in the proposed district will make it impossible for these Hispanic voters to continue do so.

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. Georgia v. United States, 411 U.S. 526 (1973); see also Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. On behalf of the Attorney General, I must object to the 2002 redistricting plan for the Florida House of Representatives. Beyond the specific discussion above, however, in all other respects we find that the State has satisfied the burden of proof required by Section 5.

We note that 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 changes neither have 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. See 28 C.F.R. 51.44. In addition, you

may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Florida plans to take concerning this matter. If you have any questions, you should call Mr. Timothy Mellett (202-307-6262), an attorney in the Voting Section.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General

EXHIBIT 22

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

Wallace Shaw, Esquire
P.O. Box 3073
Freeport, Texas 77542-1273

AUG 1[illegible] 2002

Dear Mr. Shaw:

This refers to the procedures for conducting the May 4, 2002, special city charter amendment election and the change in the method of electing city council members from districts to at large for the City of Freeport in Brazoria County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our May 14, 2002, request for additional information through July 31, 2002.

With regard to the special election, the Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

As to the change to at-large elections with numbered positions, we have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the city's previous submission of the adoption of the current districting system for the election of council members. Based on our analysis of the information you have provided, on behalf of the Attorney General, I am compelled to object to the submitted change in the method of election.

According to the 2000 Census, the city has a total population of 12,708, of whom 6,614 (52.0 percent) are Hispanic and 1,696 (13.3 percent) are black persons. Hispanic residents comprise 47.3 percent, and black residents 12.3 percent, of the city's voting age population. Approximately 29 percent of the city's registered voters are Spanish-surnamed individuals.

Until 1992, the city elected its four-member council on an at-large basis. In that year it began to use the single-member district system, which it had adopted as part of a settlement of voting rights litigation challenging the at-large system. Under the subsequent single-member district method of election, minority voters have demonstrated the ability to elect candidates of choice in at least two districts, Wards A and D. The city now proposes to reinstitute the at-large method of election. Our analysis shows that the change will have a retrogressive effect on the ability of minority voters to elect a candidate of their choice.

Elections in the city are marked by a pattern of racially polarized voting. Under the city's previous use of at-large elections, no Hispanic-preferred candidates were successful until 1990. In that election, one such candidate narrowly won office when several Anglo-supported candidates split the vote. In contrast, a Hispanic-preferred candidate won over significant Anglo opposition in 1992 in the first election held under the single-member district system. Since then, three other minority-preferred candidates have been successful in their wards. However, minority voters remain unable to elect their candidates of choice in municipal at-large elections. Thus, a return to an electoral system where all council offices are elected on an at-large basis will result in a retrogression in their ability to exercise the electoral franchise that they enjoy currently. A voting change has a discriminatory effect if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively. Reno v. Bossier Parish School Board, 528 U.S. 320, 328 (2000); Beer v. United States, 425 U.S. 130, 140-42 (1976).

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. 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). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the method of election.

We note that 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 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. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted change continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Freeport plans to take concerning this matter. If you have any questions, you should call Mr. Robert Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

J. Michael Wiggins
Acting Assistant Attorney
General

EXHIBIT 23

1 of 1 DOCUMENT

Phoenix New Times (Arizona)

April 05, 1989, Wednesday

SECTION: News Shorts, Pg. 99

LENGTH: 639 words

HEADLINE: DOES TUCSON HAVE A BETTER IDEA

BYLINE: Howard Fischer City

BODY:

If dissatisfaction with the Phoenix City Council keeps growing, it's safe to bet somebody's going to suggest tinkering with the district system--the " reform" election system voters approved in 1982.

And someone's bound to suggest Tucson has a better idea.

For sixty years Tucson has tried to combine the "best of both worlds," sort of a hybrid between district and at-large elections. Council members are nominated in each of the city's six districts; the top Republican and Democratic vote-getters in each district face off in the general election, in which all city residents vote on all the races.

The philosophy is to provide the benefits of a councilmember elected from-- and beholden to--residents of his or her own section of the city, but yet not too beholden to forget the responsibilities to the entire community.

Unlike Tucson, the Phoenix city charter specifies that its council elections be nonpartisan. So to implement the Tucson system here would mean having each district's top two vote-getters--no matter their party affiliation--run city-wide in the general.

George Miller, serving his twelfth year on the Tucson council, loves the system: "We get a cross-section of the population because each ward is represented through the primary," while at the same time preventing the " total parochialism" he sees on straight district systems such as the Pima County Board of Supervisors or the City of Phoenix.

But not everybody thinks Tucson has such a hot thing going. In fact, its new mayor would like to see a change. He'd like to copy Phoenix.

First-term Democratic Mayor Tom Volgy is leading the charge for a public vote on straight districts, complaining that the Tucson system "discriminates on the basis of access to money. In a district type of system, you or I, if we work hard enough, with a couple of thousand dollars and 30 or 40 or 50 people, can win a district election. In a citywide race, when you have to deal with 400,000 potential people, you need a lot of money to compete."

Those were precisely the arguments used to convince Phoenix voters--and overcome the unanimous opposition of the city's "establishment"--to change to districts.

Volgy thinks Tucson voters are ready to follow suit.

"In Tucson, the central issue is not developer influence," Volgy explains. " Here the issue is money. If you talk to a cross-section of people, they indicate they think there is too much money going into politics." He thinks the less expensive district races would appeal to Tucson voters.

There's also the possibility that voters won't have to make the change--it may be done for them by the U.S. Department of Justice. Volgy says the feds forced one Texas city to forego its Tucson-style system for a straight district system because Hispanics--despite having 27 percent of the population--couldn't seem to survive the citywide general election.

Volgy says Tucson has escaped that fate so far because of what he calls an " accident of history" that has given the city a high proportion of minority representation. (There are two Hispanics and one black on Tucson's council; Phoenix has one Hispanic and one black on its council.) "If that changes we'd probably be sued immediately by the Justice Department and would have to change the charter," Volgy says.

The possibility is not as crazy as it sounds.

Earlier this decade the City of Douglas amended its charter, switching from a straight district system to the style used in Tucson. City Clerk Victor Stevens says the Justice Department came in and vetoed the change, arguing it could dilute minority voting strength. So Douglas councilmembers still are nominated and elected by districts.

Tucson Mayor Tom Volgy complains that the Tucson system "discriminates on the basis of access to money."

LOAD-DATE: July 02, 1996