

DSD:EF:rjs
DJ 166-012-3
X1849-1851

Mr. Hugo J. Nowotny
Business Manager
Comal Independent School District
1421 Highway 81 East
New Braunfels, Texas 78130

APR 4 1977

Dear Mr. Nowotny:

This is in reference to the change to a numbered place system for the election of members of the Board of Trustees and the addition of two polling places in the Comal Independent School District, Comal County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 2, 1977.

The Attorney General does not interpose any objection to the additional polling places. 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 regard to the change to numbered places, we have given careful consideration to the materials and information you have submitted as well as information and comments from other interested parties, and relevant court decisions.

The use of numbered places in at-large electoral systems has been criticized in judicial decisions because of its potential for diluting the voting strength of minority group members. The court in Dunston v. Scott, 336 F. Supp. 206, 213 n. 9 (N.D.N.C. 1972), explained:

It is clear that the numbered seat law may have the effect of curtailing minority voting power. In a true at large election, if the majority spreads its vote around and the minority single shot votes, the minority strength is concentrated, thus increasing their chance of electing. However, if the minority candidate is forced to run against a specific candidate or candidates for a specific seat, the majority can readily identify for whom they must vote in order to defeat the minority candidate.

The potentially discriminatory nature of a numbered place system was also recognized in White v. Regester, 412 U.S. 755, 766-67 (1973); Zimmer v. McKeithen, 405 F.2d 1297, 1305 (5th Cir. 1973), aff'd "without approval of the constitutional views expressed by the Court of Appeals" sub nom. Last Carroll Parish School Board v. Marshall, 424 U.S. 636 (1975); and Blacks United for Lasting Leadership v. City of Shreveport, 71 F.R.D. 623, 625, 632, 636 (W.D. La. 1975).

The relevant circumstances in the Comal Independent School District do not foreclose the possibility that a numbered place system will have a discriminatory effect in that district. Although approximately 17 percent of the residents of the district are Mexican Americans, only about four percent of the district's registered voters are Mexican Americans, and no Mexican Americans have been elected to the Board of Trustees. These facts tend to show that Mexican Americans are less than full participants in the district's political process, and that the addition of a potentially discriminatory electoral device will further inhibit full and equal participation in that process by Mexican Americans.

In your letter of January 31, 1977, you state that "the change to running by place was done to simplify the ballot, and avoid confusion on the part of voters. Many voters could not understand that they could vote for one, two or three candidates when the ballot did not designate three (3) places." To the extent that this problem exists, it has not been demonstrated why such a problem could not be eliminated through education efforts and clear instructions on the ballot.

As our guidelines explain (28 C.F.R. Section 51.19), under Section 5 of the Voting Rights Act the burden is on the submitting authority to establish that the submitted change does not have the purpose and will not have the effect of denying or abridging the vote on account of race, color, or membership in a language minority group. See Georgia v. United States, 411 U.S. 526 (1973). On the basis of the judicial decisions and factual circumstances that have been discussed, the Attorney General is unable to conclude that this burden has been met here. Therefore, on behalf of the Attorney General, I must interpose an objection under Section 5 to the use of the numbered place system in the election of members of the Board of Trustees of the Conal Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change does not have the purpose and will not 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, our guidelines (28 C.F.R. Sections 51.23-51.25) permit reconsideration of the objection should you have new information bearing on the matter. However, until such time as the objection may be withdrawn or a judgment from the District of Columbia Court obtained, the legal effect of the objection by the Attorney General is to make the change to the numbered place system unenforceable.

Please inform us within 30 days of your receipt of this letter of the steps the Board of Trustees intends to take to revert to an at-large system of election without the numbered place provision or to obtain the reconsideration or judgment described in the previous paragraph. If you have any questions concerning this matter please contact Voting Section Attorney David Hunter at 202--739-3649.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division