

MAY 1 1978

Mr. Richard G. Sedgeley, Esquire
609 Fannin Building
Suite 1301
Houston, Texas 77002

Dear Mr. Sedgeley:

This is in reference to the choice of election date for the elections of the County School Trustees of Harris County, Texas, and to changes in election publicity and in polling places resulting from the choice of election date, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 28, 1978.

Prior to 1977, elections for the County School Trustees were held on the first Saturday of October of odd-numbered years. This was the election date for 15 of the 20 school districts within Harris County, and joint elections were held with these 15 districts. As a result of the Uniform Election Act of 1977, this October date was no longer available. For the new date the County School Trustees chose the third Saturday in January of even-numbered years.

We have carefully considered the information you have provided with respect to this choice of election date and the information provided by other interested parties. In our analysis we have been guided by relevant judicial decisions, by which we feel bound. See Beer v. United States, 425 U.S. 130 (1976).

cc: Public File

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According to the information provided by you the January election date was chosen by 9 of the 20 school districts in Harris County, more than any other date. However, much less than 45 percent of the voting age population or of the registered voters of Harris County resides in these 9 school districts. It further appears from the data you have presented that an equally large proportion of the county's voting age population and registered voters reside in a single district, the Houston Independent School District, whose elections will be held in November. The Houston district, moreover, appears to contain a substantial majority of the county's black and Mexican American voters and potential voters. In addition, the district that would appear to have the next greatest number of minority voters or potential voters, the North Forest Independent School District, also will not be holding January elections.

Thus, one result of the choice of the January date is that voters residing in the school districts, all predominantly white Anglo, that use the January election date will have the added incentive of participating in two elections held jointly, while other voters, including virtually all of the minority voters, will only have the County School Trustee election to attract them. In addition, in districts with joint elections all regular school district polling places will be in use, while in other districts a reduced number of polling places will be used. Thus in the January 1978 election there were only 10 polling places within the vast Houston Independent School District while during its last school district election, the Houston Independent School District used 168 polling places.

Finally, the disadvantage to minority voters and potential voters within Harris County does not appear to be counteracted by publicity with respect to the County School Trustee elections. Publicity appears to be limited primarily to legal notices and posting, and oral publicity in the Spanish language is not provided, despite the substantial Mexican American population affected.

Under Section 5 the burden is on the jurisdiction proposing a voting change to show that the new practice or procedure is not discriminatory in purpose or effect. The burden of proof is the same when a submission is made to the Attorney General as it would be in a suit for a declaratory judgment under Section 5 brought in the United States District Court for the District of Columbia. See Georgia v. United States, 411 U.S. 526 (1973). The Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, C.F.R. 51.19, state:

If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the above-described burden of proof applicable in the district court, enter an objection. . .

Under these circumstances, we are unable to conclude, as we must under the Voting Rights Act, that the election date chosen by the County School Trustees of Harris County and the changes in election publicity and in polling places resulting from the choice of election date do 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. Accordingly, on behalf of the Attorney General, I must interpose an objection to these practices or procedures with respect to voting.

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 these changes do 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, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider this objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the County School Trustees' choice of election date and the changes in election publicity and in polling places legally unenforceable.

Sincerely,

Brian K. Landsberg
~~Deputy~~ ~~Days~~ ~~III~~
Actg. Assistant Attorney General
Civil Rights Division