

Edmund F. Benchoff, Esq.
Benchoff & Guidry
316 University Drive
Nacogdoches, Texas 75961

APR 3 1980

Dear Mr. Benchoff:

This is in reference to the 5:2 single-member district election plan for the Nacogdoches Independent School District in Nacogdoches 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 5, 1980.

Under Section 5, the district has the burden of proving that the submitted 5:2 plan does not represent a retrogression in the position of black voters in the district and that it does not transgress constitutional limits with respect to black voters. See Beer v. United States, 425 U.S. 130 (1976). See also 28 C.F.R. 51.19. Under White v. Regester, 412 U.S. 755 (1973), and its progeny, to prove the constitutionality of its system, the city must prove that the electoral system is equally open to black and white voters, and that each group has a fair opportunity to elect candidates of its choice.

We have given careful consideration to the information you have provided as well as to comments and information provided by other interested parties. In addition to evidence of a general pattern of racially polarized voting in Nacogdoches County, the City of Nacogdoches and the Nacogdoches Independent School District, we have noted that no black has ever won election to the Nacogdoches Independent School District Board of Trustees. We have also been presented with and

have considered evidence of considerable residential racial segregation in Nacogdoches County.

On the basis of our review, it does not appear that the 5:2 plan submitted by the district, which provides for slim minority population majorities in Election Districts I and II, would offer black voters a fair opportunity to elect candidates of their choice. At the same time, the school district has rejected alternative electoral systems that would offer such an opportunity. For example, our analysis shows that it is possible to devise a plan that would provide for at least one district with a substantial minority population and voting age population majority. The adoption by the Nacogdoches Independent School District of an electoral scheme that would maintain minority voting strength at a minimum level, where alternative options would provide a fair chance for minority participation, is relevant to the question of an impermissible racial purpose in its adoption. See Wilkes County v. United States, 450 F. Supp. 1171 (D. D. C. 1978).

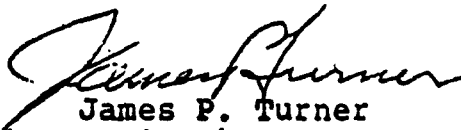
Under the circumstances we are unable to conclude, as we must under Section 5, that the submitted change does not have a racially discriminatory purpose or effect. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the 5:2 single-member district plan now under submission.

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 has neither 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 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the 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 5:2 plan legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Nacogdoches Independent School District plans

to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Andrew Karron (202-724-7403), of our staff, who has been assigned to handle this submission.

Sincerely,

A handwritten signature in cursive script, appearing to read "James P. Turner".

James P. Turner
Acting Assistant Attorney General
Civil Rights Division