Office of the Assistant Attorney General

Washington, D.C. 20530

J. W. Gary, Esq.
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Corpus Christi, Texas 78403

APR 16 1980

Dear Mr. Gary:

This is in reference to the nine polling place changes and apportionment plan providing for election of four members from single-member districts and three members at-large from residency districts, with staggered terms, for the Corpus Christi Independent School District in Nueces 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 25, 1980.

The Attorney General does not interpose any objections to the nine polling place changes. 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.

With respect to the apportionment plan, we have given careful consideration to the materials you have submitted, as well as information and comments from other interested parties. We have noted particularly the history of purposeful racial discrimination by and within the district, an apparent pattern of racial bloc-voting in district elections, and the use of racial campaign tactics in some district elections. We note that the submitted plan provides for only one district in which Mexican-American voters will have a realistic opportunity to elect a representative of their choice, in a school district which is over forty percent Mexican American in population. We note also that Mexican American voters likely would have a viable majority in a second district but for the over-population of proposed District 1. We note further that the provision for residency districts has the same effect of preventing single-shot voting for the at-large seats as the numbered post provision struck down in LULAC v. Williams, C.A. No. 74-C-95 (S.D. Tex., Oct. 2, 1979).

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); 28 C.F.R. 51.19. In the particular context of the Corpus Christi Independent School District, the standard of review is governed by the standard expressed in Kirksey v. Board of Supervisors of Hinds County, Mississippi, 554 F.2d 139, 143 (5th Cir. 1977) (en banc):

> The court must then look to the matter of whether the redistricting plan, whether adopted by legislative processes or proposed to be adopted and ordered by the court, will continue in effect an existent denial of access to the minority. Both the Supreme Court and this circuit have firmly held that where a reapportionment plan is formulated in the context of an existent intentional denial of access by minority group members to the political process, and would perpetuate that denial, the plan is constitutionally unacceptable because it is a denial of rights guaranteed under the Fourteenth and Fifteenth Amendments.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden of proof has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted apportionment plan.

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 submitted electoral system legally unenforceable.

The objection here interposed may be readily remedied, as the foregoing discussion of our rationale suggests. If the residency districts for the at-large seats and the over-population of District 1 were eliminated in a fairly drawn 4:3 plan, or if an alternative plan were devised which provided for fair political access for both black and Hispanic minorities, our concerns would be alleviated.

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 Corpus Christi Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Zaida Friedman (202--724-7187) of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division