

FEB 9 1981

Joe D. Alford, Esq.
West Orange-Cove Consolidated
Independent School District
118 South Border
Orange, Texas 77636

Dear Mr. Alford:

This is in reference to the numbered position and majority vote requirements for the election of the Board of Trustees of the West Orange-Cove Consolidated Independent School District in Orange 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 December 9, 1980.

We have given careful consideration to the information furnished by you as well as information and comments by interested parties. Under the present method of election, school trustees are elected at-large by a plurality vote. Under these circumstances, court decisions, to which we feel obligated to give great weight, indicate that a numbered position system and a majority vote requirement can have the potential for abridging minority voting rights. See Dunston v. Scott, 336 F. Supp. 206, 213 (N.D. W.C. 1972); White v. Registrar, 412 U.S. 755, 766-767 (1973); Zimmer v. McKeithen, 435 F. 2d 1297, 1305 (5th Cir. 1973); aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976); and Blacks United For Listing Leadership v. City of Shreveport, 71 F.R.D. 623, 628, 632, 636 (W.D. La. 1976).

We have not been provided information sufficient to demonstrate that the position system and majority vote requirements will not dilute the potential of the minority

voting strength in the West Orange-Cove Consolidated Independent School District. Although black candidates have been elected to the board of trustees, this was under the at-large, plurality method of election and it has not been shown that the addition of the position system and majority vote requirements will not make it more difficult for black candidates to be elected and will not inhibit the full and equal participation of blacks in the school district's political process.

Section 5 of the Voting Rights Act places upon the submitting authority the burden of proving that submitted changes in voting practices and procedures do not have a racially discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. Because of the potential for diluting black voting strength inherent in the use of a place system and majority vote requirement in the West Orange-Cove Consolidated Independent School District and because the school district has not advanced any compelling reason for their use, we are unable to conclude that the burden of proof has been sustained and that the imposition of the position system and majority vote requirement, in the context of an at-large election system, does not have a racially discriminatory purpose and will not have a racially discriminatory effect in the West Orange-Cove Consolidated Independent School District. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the place system and majority vote requirement for the election of members of the Board of Trustees of the West Orange-Cove Consolidated 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 United States District Court for the District of Columbia that these 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. 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 use of the place system and majority vote requirement 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 what course of action the West Orange-Cove Consolidated Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel to contact Carl W. Gabel (202--724-7439) of our staff, who is available to discuss this matter with you.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division