



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

15 MAR 1982

Mr. Leroy Bieri
President, Board of Trustees
Angleton Independent School District
1900 North Downing Road
Angleton, Texas 77515

Dear Mr. Bieri:

This is in reference to the use of numbered positions for the election of members of the board of trustees for the Angleton Independent School District in Brazoria County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was initially received on October 26, 1981, and supplemental information was received on January 12, 1982.

We note that in a telephone conversation on March 2, 1981, with Ms. Natalie Govan of our staff, Superintendent Wall stated his understanding that state law would require trustees to be elected by a majority vote after the adoption of numbered positions. Based on information which we received from the Office of the Texas Secretary of State, and from our review of Section 23.11 of the Texas Education Code, it appears that school districts are not required to follow a majority-vote rule when numbered positions are adopted but, rather, retain the option of imposing such a requirement. Since it appears, however, that the school district may have intended a change from a plurality-vote to a majority-vote as a part of its submission, we have addressed this change as well as the change to numbered positions in our consideration of your submission under Section 5.

Our analysis reveals that blacks and Mexican Americans constitute approximately twenty-five percent of the population of the Angleton Independent School District and that there are indications that bloc voting along racial and ethnic lines may exist. On the basis of the limited information


that is available, it appears that the addition of the numbered position, with or without the majority-vote requirement, will make it more difficult for minority candidates to be elected, and is likely to inhibit the full and equal participation of minorities in the school district's political process. In this connection, we note the observation in your letter of October 21, 1981, that under the present at-large, plurality-vote system "one particular candidate may be elected by a small group of voters by their voting for only one and refusing to vote for any others," and that under the present method of election "a person may be elected to a position on the board with less than a majority of the vote." This particular method of voting, however, has been recognized by the courts as a means peculiarly helpful to minorities seeking to win representation in an at-large system. Court decisions, to which we feel obligated to give great weight, indicate that a numbered position and majority-vote requirement in the context of the at-large election system for the school board can have the potential for abridging minority voting rights. See White v. Regester, 412 U.S. 755, 766-767 (1973); Zimmer v. McKeithen, 485 F. 2d 1297, 1305 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976).

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 numbered positions and a majority-vote requirement in the Angleton Independent School District and because the school district has not advanced any compelling reason for these changes, we are unable to conclude that the burden of proof has been sustained and that the imposition of the numbered position and majority-vote requirements, 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 Angleton Independent School District. To the extent that the information we have obtained is conflicting with respect to some of the issues involved, the Attorney General is unable to determine that the submitted changes do not have the prohibited purpose or effect of discriminating. See Section 51.39 of the Procedures for the Administration of Section 5 (46 Fed. Reg. 875). Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the numbered position and majority-vote requirements for the election of members of the Board of Trustees of the Angleton 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 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 (Section 51.44, 46 Fed. Reg. 878) 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 is obtained, the effect of the objection by the Attorney General is to make the use of numbered positions and a 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 of the course of action the Angleton Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Mr. Easton Wall
Superintendent



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Mr. Leroy Bieri
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MAY 12 1982

Dear Mr. Bieri:

This is in reference to your request that the Attorney General reconsider his March 15, 1982, objection under Section 5 of the Voting Rights Act of 1965, as amended, to numbered positions and a majority-vote requirement for the Angleton Independent School District in Brazoria County, Texas. Your request was received on March 31, 1982.

We have carefully reviewed the information that you have provided to us, as well as comments and information provided by other interested parties. However, we have not found a basis for the withdrawal of the Attorney General's objection. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have 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, irrespective of whether the changes have previously been submitted to the Attorney General. As previously noted, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the changes in question unenforceable.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division