



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

February 26, 1985

Mr. E. Max Harris  
Superintendent, Liberty-Eylau  
Independent School District  
2901 FCI Road  
Texarkana, Texas 75501

Dear Mr. Harris:

This refers to the December 20, 1972, special election; the January 15, 1973, creation of the Liberty-Eylau Independent School District; and the adoption of numbered positions in 1973 and a majority vote requirement in 1984 for the Liberty-Eylau Independent School District in Bowie County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received information to complete your submission on December 28, 1984.

We have considered carefully the materials furnished by you, relevant 1980 Census data, statistics from the Texas Education Agency, along with information and comments provided by other interested parties. With respect to the December 20, 1972, special election, the January 15, 1973, creation of the Liberty-Eylau Independent School District, and the adoption of numbered positions, the Attorney General does not interpose any objections to these 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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With respect to the adoption of the majority vote requirement, however, we are unable to reach a similar conclusion. Our analysis of the information before us indicates that blacks constitute more than 46 percent of the school

district's student population. Our analysis also reveals that blacks constitute at least 37 percent of the total population in the school district and that voting along racial lines appears to exist.

The addition in 1984 of a majority vote requirement occurred immediately after blacks for the first time were successful in seating two members on the school board. Our experience has been that such a requirement serves to increase the likelihood of head-to-head contests between black and white candidates--contests which, in the context of the racial bloc voting which seems to exist in the Liberty-Eylau School District, blacks are unlikely to win. Thus, the addition of the majority vote requirement would appear to lessen the chances of blacks electing candidates of their choice to the Liberty-Eylau School Board.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the school district's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the utilization of the majority vote requirement for the election of members to the Liberty-Eylau 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 the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the imposition of the majority vote requirement legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Liberty-Eylau Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Poli A. Marmolejos (202-724-8388), Attorney-Supervisor of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds". The signature is written in a cursive style with a large, looping initial "W".

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division