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DJ 166-012-3
N4446

DEC 29 1986

Kelly Frels, Esq.
Bracewell & Patterson
2900 South Tower Pennzoil Place
Houston, Texas 77002

Dear Mr. Frels:

This refers to the adoption of a majority vote requirement for the Wharton Independent School District in Wharton 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 the information to complete your submission on October 28, 1986.

We have considered carefully the information you have provided, as well as the information provided by other interested parties. Under the school district's election system, the seven members of the board of trustees are elected at large to numbered posts and serve staggered terms. According to information available to us, voting in Wharton Independent School District elections appears to be polarized along racial and ethnic lines and this voting pattern has hampered the ability of minority voters to elect candidates of their choice. The school district has not provided us with sufficient information to reach a different conclusion.

In this context, the incorporation of a majority vote requirement, which increases the probability of "head-to-head" contests between minority candidates and white candidates, serves to enhance the ability of the majority group to control the election of all board members and thereby exacerbates the election difficulties faced by minority voters. See City of Port Arthur v. United States, 459 U.S. 159 (1982); Rogers v. Lodge, 458 U.S. 613, 627 (1982).

cc: Public File

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no 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 that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the majority vote requirement.

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, 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 use 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 Wharton Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), attorney/reviewer in the Section 5 Unit of the Voting Section.

Sincerely,

Mr. Bradford Reynolds
Assistant Attorney General
Civil Rights Division