



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 22 1987

Michael D. Morrison, Esq.
Guinn & Morrison
South Fifth Street
Waco, Texas 76798

Dear Mr. Morrison:

This refers to the change in the method of election from at large to five members elected from single-member districts and two elected at large by numbered position to staggered terms, the districting plan, the implementation schedule, the establishment of four polling places, and the voting precinct realignment for Marlin Independent School District in Falls 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 April 28, 1987.

We have considered carefully the information you have provided, as well as information provided by other interested parties. Our review of this information shows that, even though one minority group member has served on the school board since 1978 without electoral opposition, the six minority candidates who have been in contested elections were unsuccessful, largely because of what appears to be a pattern of racially polarized voting in school district elections. Under the proposed districting plan, the ability of minority voters to participate in the electoral process would seem to be significantly enhanced since they would have the opportunity to elect candidates of their choice in two of the plan's five districts.

However, it also appears that the manner in which the at-large seats are to be elected is calculated to deny to minority voters the opportunity to participate equally in the election of members to fill these two positions on the school board. By designating these positions by number and staggering the terms so that only one at-large position is elected at a time,

the board seems effectively to have precluded minority voters from the opportunity for enhancing their voting potential through use of the election technique of single-shot voting. Were these seats filled on a concurrent basis with the plurality-win feature used in school district elections (and without numbered positions or any other anti-single-shot provision), minority voters would have a realistic opportunity to elect an additional candidate to the board. We have been afforded no nonracial justification for this seemingly unnecessary limitation on minority participation in the electoral process for school board members.

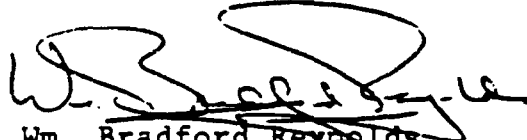
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.52 of the Procedures for the Administration of Section 5 (52 Fed Reg. 497-498 (1987)). 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 changes here under submission insofar as they incorporate the use of numbered positions and staggered terms for the at-large seats.

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 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. In addition, Section 51.45 of the guidelines (52 Fed. Reg. 496 (1987)) 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 proposed new method of election legally unenforceable so long as it seeks to have the at-large positions elected by numbered posts to staggered terms. See Section 51.10 (52 Fed. Reg. 492 (1987)).

With regard to the establishment of four polling places and the voting precinct realignment, the Attorney General will make no determination on these changes at this time since they are directly related to the new method of election to which an objection is being interposed. Section 51.22(b) (52 Fed. Reg. 493 (1987)).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Marlin Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Bradford Reynolds", written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division