U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

April 18, 1988

David Ryan, Esq.
Henslee, Ryan & Grace
3432 Greystone Drive
Suite 200
Austin, Texas 78731

Dear Mr. Ryan:

This refers to the change in method of election from at large to four single-member districts and three at-large positions (without numbered positions), the districting plan, a majority vote requirement for trustees elected from districts, the implementation schedule, candidate qualifications, and the consolidation of seven polling places for the Marshall Independent School District in Harrison 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 March 29, 1988.

We have considered carefully the information you provided, as well as information from other interested parties and from the 1980 Census. Our analysis of the 1980 Census data indicates that the minority population figures for the proposed districts provided in your submission mistakenly include a double-count of Hispanic residents. In addition, the figures furnished for each of the districts show that the black population totals include Hispanics and others, even though there is no indication that these other minority residents ally themselves with blacks in school board elections. Thus, it would appear that, from the standpoint of the black non-Hispanic population, the proposed plan contains but a single majority black district, and that one at only 54.9 percent black. This contrasts significantly with the 57 percent and 55.7 percent "minority" populations for two districts as set forth in the information provided with the submission.

In this regard, we find it particularly noteworthy that the black community apparently has been seeking for many years to have the school district adopt single-member districts. It appears that the school district resisted these efforts while, at the same time, blacks consistently were defeated in contested school board elections. In fact, during the course of these events the Attorney General found it necessary in 1976 to interpose an objection to the school board's effort to impose a

majority vote requirement which had the potential for making it even more difficult for blacks to elect candidates of their choice. Racially polarized voting appears to characterize school board elections in the Marshall Independent School District and the school district so stipulated during the course of this submission. Under such circumstances, then, a serious question is raised as to whether the submitted plan affords the black constituency an equal opportunity to participate in the electoral process and to elect candidates of their choice to office.

With respect to the consolidation of polling places, a similar concern is raised since it appears that such a consolidation would make it more difficult for many black voters to participate in school board elections. While we recognize that there is a valid interest in eliminating election day problems engendered by the school district and the city holding elections on the same day at different polling locations, it appears that the school district had available to it alternatives which would have been not nearly so restrictive on polling place accessibility as the one adopted. That choice is particularly troubling when it is noted that the consolidation does not resolve the problem of voters having to vote at more than one polling place on election day and that no input on this important matter was sought from the minority community.

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 change in the method of election as implemented by the instant districting plan, and to the polling place consolidation.

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 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 change in method of election as implemented by the submitted districting plan and the consolidation of polling places legally unenforceable. 28 C.F.R. 51.10.

With regard to the candidate qualifications and the implementation schedule, we are unable to make a determination at this time since these changes are dependent upon the changes to which an objection is being interposed. See 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Marshall 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), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division