U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 8, 1989

Dr. Ben Colwell
Superintendent, Refugio Independent
School District
P. O. Drawer 190
Refugio, Texas 78377

Dear Dr. Colwell:

This refers to the change in method of election from seven trustees elected at large (with numbered posts and plurality win) to five single-member districts and two at-large positions (plurality win), the districting plan, an implementation schedule which includes staggered terms for the two at-large seats, an annexation, and the selection of two polling places for the Refugio Independent School District in Refugio 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 submissions on March 7, 1989.

The Attorney General does not interpose any objection to the annexation. 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 change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the remaining changes, we have given careful consideration to the materials you have provided, as well as information and comments from other interested parties. At the outset, we note that while the change in the method of electing the city council will provide minority voters with a greater opportunity to participate in the political process than under the current method, some of the information you have provided has been conflicting, and important elements of this

information remain incomplete. For example, your submission includes population by race and ethnicity on a block-by-block basis for some areas of the city, while for other areas the figures are essentially estimates, the reliability of which is open to serious question. It has been alleged, and the information available to us tends to confirm, that the proposed districting plan overconcentrates or "packs" minority voters into District 1, while a significant proportion of the remaining minority population is divided between Districts 3 and 4. In view of the apparent pattern of polarized voting in school district elections, it appears that this packing and fragmentation of the minority community denies Hispanic and black voters an equal opportunity to participate in the political process and elect candidates of their choice to office.

Our review also has revealed information to support the allegation that the mixed "5-2" system of district and at-large seats was selected over the seven single-member district system preferred by minority citizens so as to avoid the potential for fair minority representation in three majority-minority districts. In addition, the selection of staggered terms for the at-large seats would preclude minority voters from using the election device of single-shot voting and thus further limits the opportunity of minority voters to participate in the political process. Finally, we note that the polling places appear to have been chosen to benefit the white community and disadvantage minority voters, many of whom live a great distance from the proposed polling sites. We have received no adequate nonracial explanation for these decisions which appear to be the product of a decisionmaking process in which minority citizens did not have the opportunity to effectively participate.

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 nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the burden of showing the absence of a proscribed purpose has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted changes, with the exception of the annexation, as noted above.

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 submitted changes legally unenforceable. 28 C.F.R. 51.10.

Lastly, we note that the school district has yet to seek review under Section 5 of its bilingual procedures though we requested that the district seek Section 5 clearance over five months ago, in our November 28, 1988, letter to you. We understand that the district is in the process of gathering the information necessary to make a Section 5 submission and, in view of the time that has passed, we would expect that such a submission should be forthcoming immediately. We would be happy to provide whatever assistance would be appropriate in this regard.

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

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division