JRD:MAP:TCR:gmh
DJ 166-012-3
90-1268

April 22, 1991

Judy Underwood, Esq.
Walsh, Judge, Anderson,
Underwood & Schulze
P.O. Box 2156
Austin, Texas 78768

Dear Ms. Underwood:

This refers to the change in the method of electing the school board from at large to five single-member districts and two at large, the concurrent election of the at-large seats by numbered position, the districting plan, the implementation schedule, and the polling place change for the Refugio Independent School District in Refugio County, Texas, submitted to the Attorney General under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your last submittal of information regarding these matters on February 20, 1991.

The Attorney General does not interpose any objection to the submitted polling place change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the other submitted changes, however, we cannot reach a similar conclusion. As you are aware, on May 8, 1989, the Attorney General interposed an objection under Section 5 to an earlier five district, two at large plan adopted by the school district. In that regard, we found that in light of the electoral circumstances present in the school district (in particular, the apparent pattern of polarized voting), the proposed plan unnecessarily minimized the opportunity of minorities to elect candidates of their choice to office. We noted that our information tended to support a concern that the 5-2 system had been selected over a system of seven single-member districts "to avoid the potential for fair minority representation in three majority-minority districts." We also noted that the use of staggered terms for the at-large seats would further limit minority electoral opportunity by foreclosing the use of the election device of single-shot voting.

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In response to the objection, the school district proposes a redesigned 5-2 system, eliminating the use of staggered terms for the two at-large seats which characterized the earlier plan. While two of the five districts in the new proposal seem to provide minority voters with a realistic opportunity to elect candidates of their choice to the school board, like the previous proposal the present one continues to limit the opportunity of minorities to no more than those two seats by precluding the use of single-shot voting for the at-large positions, through the use of numbered posts.

We recognize that the school district has concluded that state law requires the use of numbered positions for the at-large seats in a 5-2 plan such as this, but we are also aware that other independent school districts in Texas have adopted 5-2 plans without numbered posts. In any event, the school district has not adequately explained, in nonracial terms, why other alternative election systems, such as a seven single-member district plan, which concededly are sanctioned by state law could not be adopted by the Refugio Independent School District.

In that regard, we note that, even though our May 8, 1989, letter expressed concern over the lack of opportunity for minority citizens to participate in that decision making process, it appears that in developing the instant plan the school district perpetuated this problem. Thus, while the district did establish a committee of minority citizens to examine the election method issue, the committee appears to have been excluded from any participation in the process once it made known its preference for a seven single-member district plan.

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 your burden 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 polling place change noted above.

Of course, under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed 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, you may 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 objected-to changes continue to be legally unenforceable. 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Refugio Independent School District plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division