



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

John T. Fleming, Esq.  
Henslee, Ryan & Groce, P.C.  
Great Hill Plaza  
9600 Great Hills Trail  
Suite 300 West  
Austin, Texas 78759

DEC 24 1991

Dear Mr. Fleming:

This refers to the change in method of election from seven trustees elected at large by numbered positions to five trustees elected from single-member districts and two elected at large, the districting plan, implementation schedule, precinct realignment and changes in polling places for the Del Valle Independent School District in Travis 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 your response to our request for additional information on October 31, 1991.

We have carefully reviewed the information you have provided, as well as Census data and information and comments from other interested persons. At the outset, we note that according to the 1990 Census data, black and Hispanic residents constitute 44 percent of the school district's total population. We also note that the court in Lopez v. Del Valle ISD, No. 475,874, slip. op. (D. Travis County, TX May 21, 1991), has found that the existing at-large method of election discriminates against blacks and Hispanics in violation of the Texas Equal Rights Amendment and the state's Equal Protection Clause.

As the school district has acknowledged, the proposed plan includes only one majority minority district. At the same time, the plan maintains two at-large seats, a feature which the court has found to be racially discriminatory in the context of the racial bloc voting that exists in school district elections. Several alternative plans were available for consideration by the school board in which minority voters would have an opportunity to elect candidates of their choice to at least two trustee positions. We understand that these alternative plans generally are favored by the minority community and would appear more fairly to reflect minority voting strength in the school district.

cc: Public File

With respect to the changes in polling place locations, serious concerns have been raised that the polling place change for District 4, now located in the rural area of the county several miles distant from the minority community in the Montopolis area of the district, will make it more difficult for minority voters to get to the polls and vote. While we are aware that because of precinct boundary changes the Montopolis Recreation Center, which had previously served as the polling place for this area, is no longer in the minority district, other sites close by could have been chosen. The school district has failed to offer any persuasive nonracial reasons for its decisions in this regard.

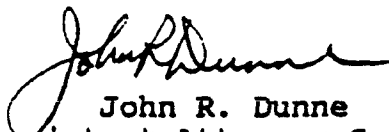
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of demonstrating that proposed changes do not have a racially discriminatory purpose or effect. Georgia v. United States, 411 U.S. 526 (1973). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the school district's burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the proposed method of election as well as the districting plan and the polling place change for District 4 for the Del Valle Independent School District.

We note that under Section 5 you have the right to seek 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, 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 method of election, the districting plan and polling place change continue to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

With regard to the realignment of voting precincts, the remaining polling place changes and the implementation schedule, it is apparent that these changes are directly related to the change in the method of election and the districting plan. Since these changes are dependent upon the objected-to changes, the Attorney General is unable to make a final determination with respect to them at this time. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Del Valle Independent School District plans to take concerning these matters. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,



John R. Dunne  
Assistant Attorney General  
Civil Rights Division



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**MAR 23 1992**

John T. Fleming, Esq.  
Henslee, Ryan & Groce  
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Suite 300 West  
Austin, Texas 78759

Dear Mr. Fleming:

This refers to your request that the Attorney General reconsider the December 24, 1991, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the change in method of election from seven trustees elected at large by numbered positions to five trustees elected from single-member districts and two elected at large, the districting plan, and a change in polling places in District 4 for the Del Valle Independent School District in Travis County, Texas. We received your letter on January 21, 1992.

We have reconsidered our earlier determination in this matter based on the arguments you have advanced in support of your request, along with the other information in our files.

Your request for reconsideration emphasizes our reliance on the trial court's findings in Lopez v. Del Valle Independent School District, No. 475,874, slip op. (D. Travis County, TX May 29, 1991), in which the court found that the existing at-large method of election discriminates against blacks and Hispanics in violation of the Texas Equal Rights Amendment and the state's Equal Protection Clause. Our objection, however, was interposed only after an extensive review of the proposed 5-2 method of election and districting plan, which included not only an analysis of the overall impact of the proposed changes on minority voters, but also an examination of the reasons for and the impact of the legislative choices that were made in arriving at the proposed changes.

As we noted in our letter of December 24, 1991, the proposed plan included only one majority minority district, while several available alternative plans afforded minority voters an opportunity to elect candidates of their choice to at least two trustee positions. These alternative plans were generally favored by the minority community and appeared to more fairly reflect minority voting strength in the school district. While we are mindful that the Voting Rights Act ensures fair election opportunities and does not require that any jurisdiction attempt to guarantee racial or ethnic proportional results, the rejection of these plans has still not satisfactorily been explained in terms of any racially neutral criteria.

With respect to the change in polling place in District 4, you state that the school district was not afforded the opportunity to explain the "reasons for its decision." In this regard, we would direct your attention to our letter of October 21, 1991, where we requested that the school district respond to concerns that "the polling place changes proposed [would] make it more difficult for minority voters, especially those in District 4, to participate in school district elections." Your response to that request was considered fully in reaching our determination.

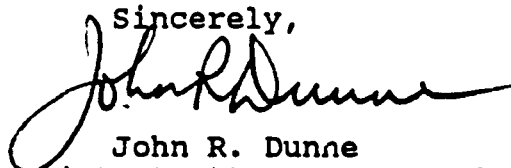
Because you have not provided any new or additional information relating to the purpose or effect of the submitted changes, I remain unable to conclude that Del Valle Independent School District has carried its burden of showing that the submitted changes have neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the proposed method of election as well as the districting plan, and the polling place change for District 4 for the Del Valle Independent School District.

As we previously noted, you may 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. We remind you, however, that unless and until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change is legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

With regard to the realignment of voting precincts, the remaining polling place changes and the implementation schedule, it is apparent that these changes are directly related to the change in the method of election and the districting plan. Since these changes are dependent upon the objected-to changes, the Attorney General is unable to make a final determination with the respect to them at this time. 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 Del Valle Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Dunne".

John R. Dunne  
Assistant Attorney General  
Civil Rights Division