



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

John T. Fleming, Esq.
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9600 Great Hills Trail
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July 31, 1992

Dear Mr. Fleming:

This refers to the interim change in method of election from seven members elected at large by numbered positions to six elected from single-member districts and one elected at large, the districting plan, implementation schedule, polling place changes, a majority vote requirement, a precinct realignment, creation of a voting precinct, and a change in the method of selecting the president of the board of trustees 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 June 1, and July 28, 1992.

On June 1, 1992, we received your May 28, 1992, letter, which enclosed a new map of district boundaries for the six single-member districting plan and demographic data, including a new Census tract and block list, prepared by plaintiffs in Lopez v. Del Valle Independent School District, No. 475,874 (D. Travis County, Tx.). The new district map is different than the map submitted on February 25, 1992. We understand that at least some of these changes reflect revisions to the plan made by the court in Lopez, and that the map submitted on June 1, 1992, represents the districting plan implemented in the May 2, 1992, election. Your correspondence indicates that the school district no longer wishes to implement the districting plan initially submitted. Accordingly, no determination by the Attorney General is required concerning that districting plan submitted on February 25, 1992. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.25 and 51.35). Instead, we have reviewed the districting plan submitted on June 1, 1992.

We have carefully analyzed the proposed changes and the information you have provided, as well as Census data and information and comments from other interested persons. According to the 1990 Census, black and Hispanic residents constitute 44.3 percent of the school district's population. We also note that the map of the districting plan submitted on June 1, 1992, and the demographic data provided on the same date do not correspond. Our estimates of the population data for the submitted districting plan reveal a total population deviation among the districts of approximately 38 percent.

We are mindful that the voting changes you have submitted for Section 5 review are intended to remedy the concerns expressed in our December 24, 1991, objection to a method of election with five single-member districts and two at-large seats and a districting plan proposed by the school district. Our objection letter noted that, in the context of the racial bloc voting apparent in the school district, the plan provided blacks and Hispanics a realistic opportunity to elect only one school board trustee out of seven, even though available alternative plans afforded minorities an opportunity to elect at least two trustees. The decision to maintain two at-large positions also raised concerns that the proposed changes were intended to minimize minority voting strength.

Analysis of the plan now under review reveals that it, too, contains only one district in which blacks and Hispanics have a realistic opportunity to elect their chosen representatives. The submitted plan also maintains an at-large position that would appear to be out of reach for minority voters. While the lack of accurate demographic data for the submitted plan makes our review more difficult, our analysis indicates that only District 1 has a majority of blacks and Hispanics of voting age. Serious concerns have been raised as to whether minority voters in any of the other districts will have an opportunity to elect their preferred candidates. Moreover, it appears that after our earlier objection, the board refused to consider alternative plans providing for two viable minority districts.

With respect to the majority vote requirement for the at-large position on the board of trustees, it is generally well established that a majority vote requirement in an at-large context enhances the opportunity for discrimination against minority voters. See, e.g. City of Port Arthur v. United States, 459 U.S. 159 (1982); Senate Report No. 417, 97th Congress, 2nd Session 6 (1982). It appears that imposition of a majority vote requirement in Del Valle Independent School District would make it more difficult for minority voters to elect candidates of their choice to the at-large position and the school district has presented us with nothing to show that this would not be the case.

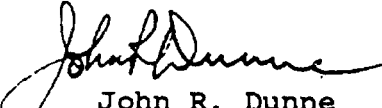
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of demonstrating that proposed changes do not have a racially discriminatory purpose or effect. Georgia v. United States, 411 U.S. 526 (1973). In light of the information available to us, and given the considerations discussed 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, the districting plan, and the majority vote requirement as it applies to the at-large position on the board of trustees for the Del Valle Independent School District.

We note that under Section 5 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, 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, districting plan and the majority vote requirement as applied to the at-large position on the board of trustees continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

The remaining changes are directly related to the change in the method of election and the districting plan. Accordingly, the Attorney General is also unable to make any determination regarding these changes under Section 5 at this time. See also 28 C.F.R. 51.22(b) and 51.35.

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