U.S. Department of Justice

Civil Rights Division

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

MAR 22 1993

Mr. Mac Wheat
Superintendent
Carthage Independent School District
#1 Bulldog Drive
Carthage, Texas 75633

Dear Mr. Wheat:

This refers to the change in method of election from seven members elected at large by numbered places and majority vote to five members elected from single-member districts and two at-large seats by numbered places with a majority vote requirement, the districting plan, the implementation schedule, and the establishment of a new polling place for the Carthage Independent School District in Panola 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 supplemental information necessary to review these matters on January 21 and March 16, 1993.

The Attorney General does not interpose any objection to the submitted establishment of a new polling place. 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 this 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. We have carefully considered the information you have provided, as well as 1990 Census data and information and comments from other interested parties. According to the 1990 Census, black residents constitute 18.9 percent of the school district's total population and 17.7 percent of its voting age population. Information available to us indicates an apparent pattern of racially polarized voting among the school district's voters and that under the existing at-large system, black voters have been unable to elect candidates of their choice to the school board.

In 1989, the school board established a biracial study committee to consider alternative methods of election. Among the plans considered were plans with seven single-member districts (7-0 plan), six single-member districts and one at-large seat (6-1 plan) and five single-member districts and two at-large seats (5-2 plan). While all of the black members of the committee preferred a seven single-member district plan, all of the white members preferred a 5-2 plan. The committee reached unanimity on a compromise by agreeing to recommend a 5-2 plan, provided that there be a plurality vote requirement for the at-large seats. The committee's work was completed in 1992 when a districting plan was developed and its final recommendation was sent to the school board.

While the school board decided to accept the study committee's recommendation to change to a 5-2 plan, as well as to adopt the proposed districting plan, the board rejected the plurality vote recommendation and decided to impose a majority vote requirement instead. The board made this latter decision apparently without seeking to obtain input from the minority community. Moreover, the timing of the decision raises concerns, as it came just four months after a recent contest for school board trustees in which a black candidate received a 40-percent plurality of the votes cast in the primary election, but was defeated in the runoff election by a white candidate.

The school board now contends, apparently based upon information it first received months after the decision was made, that state law may proscribe the use of a plurality vote requirement for some trustee positions and a majority vote requirement for others. Of course, such post hoc information could not have formed the basis of the board's decision. In addition, the state law on this point is not clear and we have been directed to no definitive interpretation on this issue. Moreover, the board has not suggested that state law prevented it from choosing to have all seats in the new election system subject to a plurality vote requirement.

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 the Procedures for the Administration of Section 5 (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 school district's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted change in method of election.

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 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 change in method of election continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the submitted districting plan and implementation schedule are dependent upon the method of election change to which an objection is being interposed, the Attorney General is unable to make a final determination with respect to those changes at this time. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce both Section 2 and Section 5 of the Voting Rights Act, please inform us of the action the Carthage Independent School District plans to take concerning this matter. If you have any questions or want to discuss this matter, please call Donna M. Murphy (202-514-6153), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division