U.S. Department of Justice

Civil Rights Division

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

December 21, 2012

Ms. Melody Thomas Chappell, Esq.
Wells, Peyton, Greenberg & Hunt
P.O. Box 3708
Beaumont, Texas 77704-3708

Dear Ms. Chappell:

This refers to the change in the method of election from seven single-member districts to five single-member districts with two at-large positions, and the 2012 board of trustee districting plan, for Beaumont Independent School District in Jefferson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your response to our October 1, 2012, request for additional information on October 22, 2012, and additional information was received through December 10, 2012.

We have carefully considered the information you have provided, as well as census data, comments, and information from other interested parties. Under Section 5 of the Voting Rights Act, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed changes "neither [have] the purpose nor will have the effect" of denying or abridging the right to vote on account of race, color, or membership in language minority group. *Georgia* v. *United States*, 411 U.S. 526 (1973); *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965,* 28 C.F.R. 51.52. The voting changes at issue must be measured against the benchmark practice to determine whether they would "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer* v. *United States*, 425 U.S. 130, 141 (1976).

According to the 2010 Census, the district had a total population of 132,225 persons, of whom 60,581 (45.8%) were African American and 19,459 (14.7%) were Hispanic. Its voting age population was 101,912, of whom 44,085 (43.3%) were black, and 13,734 (13.5%) were Hispanic. The vast majority of the district's population resides in the City of Beaumont, which has a similar demographic profile.

Prior to 1985, five of the seven board members were elected from single-member districts and two were elected at large. In 1985, a federal court devised a single-member district plan for the election of all seven board members. *United States* v. *Texas Education Agency (Beaumont*

Independent School District), Cause No. 6819-CA (E.D. Tex. Apr. 22, 1985). That method of election has been used continuously since then and is the benchmark for our analysis here. It provides African American voters with the ability to elect four members to the district's board.

The district proposes to elect two of its members at large and five members from single-member districts. Our analysis shows that a fairly-drawn districting plan with five districts will provide African American voters with the ability to elect candidates of choice in three of the districts. Accordingly, to meet its burden that the change does not result in impermissible retrogression, the district must establish that the at-large method for the two remaining seats does not preclude African American voters from electing a candidate of choice to office. For the reasons discussed below, the district has failed to do so.

Aside from various tax elections, the May 2011 referendum is the only recent school district election in which the electorate would be identical to that of an at-large position on the school board. There is overwhelming evidence that both the campaign leading to the election as well as the issue itself carried racial overtones with the genesis of the change and virtually all of its support coming from white residents. A statistical analysis of the election confirms the extreme racial polarization that the issue created. Black voters cohesively voted to maintain the current method of election and white voters voted cohesively for the proposed change. We estimate over 90 percent of white voters, but less than 10 percent of black voters, supported the change.

An examination of at-large elections for the Beaumont City Council also proved informative because of the overlap in population and the similarity in demographics. There, we found racial cohesion among black voters at levels similar to those identified in the school district election. More significantly, we found significant racial polarization and the same unwillingness of white voters to support a black-preferred candidate, with little evidence of crossover voting by white voters in the city's at-large council races.

In the past ten years, numerous black-preferred candidates have sought municipal office in the city. With the sole exception of one candidate, African Americans have been unable to elect candidates of choice to the city's at-large council positions. Our analyses showed that this candidate only received about eight percent of the non-black vote in both the 2007 and 2011 elections, placing second to last among non-black voters in 2011. And anecdotal evidence suggests that even this minimal level of crossover voting was the result of an out-of-the-ordinary public endorsement and television appearance by white voters on behalf of this candidate; other black-preferred candidates have failed to achieve more than three percent of the non-black vote in at-large city council elections. In addition, our analyses demonstrate that this candidate's election was dependent on single-shot voting, in which black voters withheld their votes for the second at-large city council seat in both 2007 and 2011, voting only for this candidate. The statistical and anecdotal evidence therefore confirm that this one candidate's experience is not indicative of black-preferred candidates' prospects for success in at-large elections. *See Texas* v. *United States*, 2012 WL 3671924, at *22-23 (D.D.C. Aug. 28, 2012) (three-judge court) (isolated electoral success by one candidate is insufficient to demonstrate that minority voters have the consistent ability to elect their preferred candidates of choice).

The school district has failed to establish that implementing the proposed method of election will offer the same ability to African American voters to exercise the electoral franchise that they enjoy currently. Black voters now have the ability to elect four of the seven board members; the proposed plan provides that ability for only three positions. In order for black voters to maintain their current level of voting strength under the new configuration, they must be able to elect a candidate of choice from one at-large position. The evidence, however, offers little, if any, support for that conclusion.

We note as well that this is not the first occasion on which the school district has proposed the use of at-large elections in a manner that would cause a retrogression in black voting strength; on October 20, 1983, the Attorney General objected to the proposed consolidation of the Beaumont and South Park school districts on the ground that the change would "have a significant adverse impact on the ability of blacks to elect representatives of their choice to the surviving school board under an at-large election system."

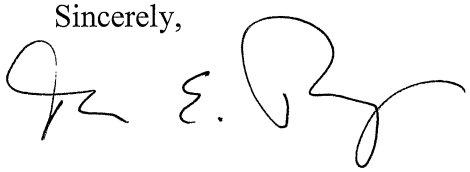
As detailed above, it is not likely that a black-preferred candidate would successfully be elected in an at-large contest. Based upon that analysis I cannot conclude, as I must under Section 5, that the district has met its burden of establishing the absence of a retrogressive effect. Accordingly, I must interpose an objection to the proposed change in method of election for the Beaumont Independent School District from seven single-member districts to five single-member districts with two at-large positions. Because the district has failed to meet its burden of demonstrating that this proposed change will not have a retrogressive effect, we do not make any determination as to whether the district has established that the proposed change was adopted with no discriminatory purpose.

Because the adoption of the districting plan is dependent upon the objected-to proposed change in method of election, it would be inappropriate for the Attorney General to make a determination on this related change. 28 C.F.R. 51.22.

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. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, unless and until the objection is withdrawn or a judgment from the federal district court is obtained, the changes continue to be legally unenforceable. *Clark* v. *Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the district plans to take concerning this matter. If you have any questions, please call Mr. Robert S. Berman (202-514-8690), a deputy chief in the Voting Section.

Sincerely,



Thomas E. Perez
Assistant Attorney General