



U.S. Department of Justice

Civil Rights Division

---

Office of the Assistant Attorney General

Washington, D.C. 20530

November 9, 1984

Sam Sparks, Esq.  
Grambling & Mounce  
P. O. Drawer 1977  
El Paso, Texas 79950

Dear Mr. Sparks:

This refers to the implementation schedule for the new method of electing members of the board of trustees for the El Paso Independent School District in El Paso 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 the information to complete your submission on September 10, 1984.

The proposal before us is to delay implementation of the single-member district plan for the school board, which plan the Attorney General precleared on August 6, 1984; the single-member district plan was drawn following a decision of the federal district court that the at-large method of electing the school board violates Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973. Sierra v. El Paso Independent School District, Civ. Action No. EP-83-CA-203 (W.D. Tex.). The submission now before us proposes that the new plan would not immediately be implemented fully but, rather, that elections would be conducted in two districts in 1984 (or as soon thereafter as an election can be scheduled), elections would be conducted in three other districts in 1986, and elections would be conducted in the remaining two districts in 1988.

We have considered carefully the factual information and legal arguments you have submitted on behalf of the proposal, as well as that provided by other interested parties. It appears to us, however, that delaying full implementation of the single-member district plan until 1988 will perpetuate until that time the discriminatory results which the court found to exist in the at-large election system under which current members of the school board were elected. Moreover, there are strong indications that this delay was calculated to deny the minority community, for as long as possible, of the opportunity for equal participation in the electoral process.

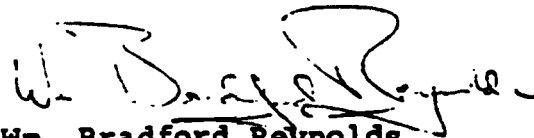
In this regard, we cannot help but note that, although the initial election would involve two districts in which Mexican Americans constitute a significant majority of the population, elections in the two other districts in which Mexican Americans constitute a majority of the electorate would be delayed for several years. The school district has not presented any compelling nonracial justification for such a delay in the full enjoyment of rights protected by the Voting Rights Act.

Under Section 5 of the Voting Rights Act, the submitting jurisdiction bears 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 of the Administration of Section 5 (28 C.F.R. 51.39(e)). In view of the above discussion, I am unable to conclude that that burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation schedule for the election of board members of the El Paso Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the change has 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, Section 51.44 of the guidelines permits you to 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 effect of the objection by the Attorney General is to make the implementation schedule for the election of board members for the El Paso Independent School District legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the El Paso Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Poli A. Marmolejos (202-724-6718), Attorney Supervisor in our Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division