



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

January 22, 1988

William T. Armstrong III, Esq.
Foster, Lewis, Langley, Gardner & Banack
Frost Bank Tower
16th Floor
San Antonio, Texas 78205

Dear Mr. Armstrong:

This refers to the change in the method of electing the seven school trustees from at large with numbered positions to five single-member districts and two at-large seats elected by position with staggered terms, the districting plan, the realignment of voting precincts, the creation of five voting precincts and polling places therefor, and the implementation schedule for the Hondo Independent School District in Frio and Medina Counties, 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 November 23, 1987.

At the outset, we note that the existing at-large method of election with numbered positions historically has not provided Hispanic voters with an effective opportunity to elect candidates of their choice. By providing for two majority Hispanic districts, however, the proposed change in the method of election and districting plan for the school board increase the possibility for the Hispanic voting population to elect candidates of their choice. Thus, the changes before us would seem to meet the nonretrogressive effects test imposed by Section 5.

Under Section 5 of the Voting Rights Act, however, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose as well as no 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 this regard, we note that the new method of election would not only include five single-member districts but two at-large positions which would be elected by place on a staggered basis, thereby effectively continuing for those two positions the same features which have characterized the existing system under which Hispanics have not been able to elect representatives of their

choice to office. Although the use of some at-large seats in such a plan is not unusual, the requirement in this proposal that the two at-large seats shall be elected on a staggered and designated place basis, inhibits the potential for effective minority participation and, thus far, has not been justified by any non-racial considerations. Thus, it would appear that the plan as a whole may have been calculated to limit the voting potential of Hispanic voters in the school district, and while this plan cannot be said to be retrogressive in effect, we are unable to draw the same conclusion with regard to the issue of racial purpose.

In light of these considerations, therefore, I cannot conclude, as I must under the Voting Rights Act, that the school district has sustained its burden with regard to purpose. Accordingly, on behalf of the Attorney General, I must object to the school district's change in the method of election and the districting plan insofar as they incorporate the use of designated positions and staggered terms for the two at-large seats.

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 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, Section 51.45 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 proposed districting plan legally unenforceable. 28 C.F.R. 51.10.

With regard to the realignment of voting precincts, the creation of five voting precincts and polling places therefor, and the implementation schedule, it is apparent that these changes were made to accommodate the districting plan. Since they are dependent upon the districting plan to which an objection is being interposed, 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 this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Hondo Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division