



U.S. Department of Justice

Civil Rights Division

*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

March 30, 1992

James E. Nelson, Esq.  
Schafer, Davis, McCollum,  
Ashley, O'Leary & Stoker  
P. O. Drawer 1552  
Odessa, Texas 79760-1552

Dear Mr. Nelson:

This refers to the 1991 redistricting plan for trustee districts and a polling place change for the Monahans-Wickett-Pyote Independent School District in Ward 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 January 28, 1992.

We have carefully considered the information you have provided as well as 1980 and 1990 Census data and information from other interested parties. According to our information, the board of trustees is composed of seven members; two are elected at large and five are elected from single-member districts. Hispanics comprise 34.5 percent of the school district population, and the school district has conceded that racial bloc voting characterizes school district elections.

The proposed plan appears to be virtually the equivalent of the existing plan in the extent to which it affords minorities in the district an equal opportunity to elect candidates of their choice. Thus, even though 1990 Census data reflect a significant increase over 1980 Census data in the Hispanic population, in both the existing plan, which was drawn on the basis of 1980 data, and the proposed plan, there is only one district, District 3, in which Hispanics constitute a majority of the total population.

Indeed, it appears that no attempt was made to acknowledge the increased Hispanic voting strength and, from the onset of the redistricting process, the school district identified retention of the one Hispanic district as part of its redistricting criteria. In accomplishing this result, the proposed plan appears unnecessarily to have fragmented Hispanic population in the City of Monahans. Our examination of minority concentrations in Monahans shows that elimination of such fragmentation could result in a second majority Hispanic district, despite the school district's demographer's statement to the contrary.

In addition, the school district appears to have avoided public participation in the redistricting effort as much as possible. The demographer developed the plan without even visiting the community, the school district neither invited nor arranged for any citizen participation, and decisions relating to the plan were made at school board meetings the notices for which were published only in English. Although the Voting Rights Act litigation that produced the existing method of election and districting plan had only recently been concluded, the school district's redistricting procedures seem to have been calculated to avoid participation in the process by the minority plaintiffs or their attorney. As a result, the school district succeeded in freezing in place a plan that does not appear fairly to reflect minority voting strength in the school district.

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. Georgia v. United States, 411 U.S. 526 (1973); 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 your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the redistricting plan.

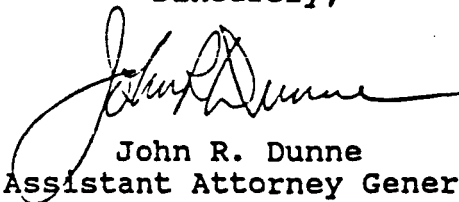
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of

Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

Because the polling place change is dependent upon the objected-to redistricting, the Attorney General will make no determination with regard to this change. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Monahans-Wickett-Pyote Independent School District plans to take concerning this matter. If you have any questions, you should call Nancy Sardeson (202-307-3153), an attorney in the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Dunne".

John R. Dunne  
Assistant Attorney General  
Civil Rights Division