

DEC 27 1978

Mr. Lucius D. Bunton
Shafer, Gilliland, Davis,
Bunton & McCollum
Attorneys at Law
First National Bank Building
Post Office Drawer 1552
Odessa, Texas 79760

Dear Mr. Bunton:

This is in reference to the reapportionment of commissioner precincts, polling place changes, addition of voting precincts and additional locations for absentee voting in 1975, in Terrell County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on October 28, 1978. In accordance with the request of the Court in Escamilla v. Stavley C.A. No. DR-78-CA-23 (K.D. Texas), we have made every effort to expedite our consideration of this submission pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. 51.22) but have been unable to respond until this time.

We have given careful consideration to the changes involved and the supporting materials, as well as information and comments from other interested parties. The Attorney General does not interpose any objections to the polling place changes, addition of voting precincts and additional locations for absentee voting in 1975. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

In our review of districting plans we are guided by relevant judicial decisions. See Beer v. United States, 425 U.S. 130 (1976); Kirksey v. Hinds County Board of Supervisors, 554 F.2d 139 (5th Cir.), cert. denied, 54 L.Ed.2d 454 (1977); Wilkes County v. United States, 450 F. Supp. 1171 (D.D.C. 1978), affirmed, 47 U.S.L.W. 3391 (U.S. Dec. 4, 1978) (76-70). Under Section 5 the submitting jurisdiction has the burden of proving both that the change in question was not adopted with a discriminatory purpose and that its effect will not be discriminatory. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.19; Georgia v. United States, 411 U.S. 525, 533 (1973); City of Richmond v. United States, 422 U.S. 358, 380-81 (1975) (Brennan, J., dissenting).

In regard to the 1973 reapportionment of commissioner precincts in Terrell County, our analysis reveals that, according to the population survey conducted by the county, Mexican Americans constitute approximately 41 percent of the population of Terrell County. Under the submitted reapportionment plan, Mexican Americans constitute 75.6 percent of the population of Commissioner Precinct 2, 43.6 percent of the population of Commissioner Precinct 1, and 38.8 percent of the population of Commissioner Precinct 4. In our opinion, the effect of the 1973 reapportionment plan is to dilute minority voting strength by unnecessarily dividing the Mexican American community in Sanderson among three commissioner precincts. As a result, it would seem that Mexican American voters in Terrell County are afforded less of an opportunity than other residents to participate in the political processes and elect candidates of their choice. By splitting the Mexican American community with Precinct 2 and dispersing the remainder of that community between commissioner precincts 1 and 4, the plan has the effect of minimizing the overall impact of the Mexican American vote. Fairly drawn alternative reapportionment plans could easily avoid this result.

Under these circumstances, therefore, we are unable to conclude, as we must under the Voting Rights Act, that the plan does not discriminate against Mexican American voters. Accordingly, on behalf of the Attorney General, I must interpose an objection to the reapportionment plan here under submission.

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 this 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, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection the Attorney General is to make the reapportionment plan for commissioner precincts in Terrell County legally unenforceable.

As requested by the Court in the above cited litigation, we are providing a copy of this letter to the Court and to counsel for plaintiffs.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc: United States Circuit Judge Homer Thornberry
United States District Judge John Howland Wood, Jr.
United States District Judge D. W. Suttle

Clerk, U.S. District Court
Western District of Texas
Post Office Box 1349
Del Rio, Texas 78840

Joaquin G. Avila, Esquire
201 N. St. Mary's Street
Suite 517
San Antonio, Texas 78205