



U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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166-012-3
D2634

25 JAN 1982

Honorable David Dean
Secretary of State
Elections Division
P. O. Box 12887
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to the Legislative Redistricting Board Plan Number 1 which provides for the redistricting of the Senate for the State of Texas submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on December 1, 1981.

We have given careful consideration to the information that you have supplied. In addition, we have examined comments and information provided by other interested persons. As you know, under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also, Procedures for the Administration of Section 5, 28 C.F.R. 51.39(e) (46 Fed. Reg. 878).

In this instance we have received a number of allegations that the plan discriminates against black and Mexican-American voters in certain parts of the state. In fact, your submission itself states:

It has come to my attention that the submitted Plan may not comply with the Voting Rights Act in all respects. There are claims that under the Plan there is a retrogression in opportunities for minority representation. In my opinion several of these claims are meritorious.

Because of the number of questions which thus have been raised about the plan and because you have requested that we make a decision on this submission on the basis of the information now before us, we are unable to conclude that the state has satisfied its burden of demonstrating that the plan "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or [membership in a language minority group]." 42 U.S.C. 1973c. Accordingly, on behalf of the Attorney General, I must interpose an objection to the plan.

At the outset, we note that in the ten-year period since the 1970 Census the state's population has increased by 27.1 percent. A significant portion of that increase was experienced in the minority community. This is especially true for the Mexican-American population which increased 44.96 percent since 1970.

The senate districting plan, however, does not appear to reflect this increase in the voting strength of the minority community. The net result seems to be a plan in which minorities enjoy no significant gains even though their percentage of the population has increased and the demography of the state presents several areas for recognizing the increased potential of the minority community. While we recognize there is no obligation to maximize the political impact of a minority group, it has been alleged, and not adequately refuted, that the state's plan, as it affects Bexar and Harris Counties, unnecessarily fragments minority concentrations in such a manner as to dilute the voting strength of the minority communities.

For example, in Bexar County, existing District 19 is underpopulated according to the 1980 Census and thus requires additional persons to meet one person-one vote standards. The proposed plan for this area, however, removes a substantial number of Mexican Americans from this district and adds a larger number of Anglos. The effect of this method of drawing the boundaries for

proposed District 19 appears to be a dilution of Mexican-American voting strength. Regarding Harris County, we have received allegations that the senate districts unnecessarily fragment the minority community and the odd configurations of proposed Districts 6 and 13 lend support to that claim and raise substantial question as to whether the plan, as it affects Harris County, satisfies the requirements of Section 5.

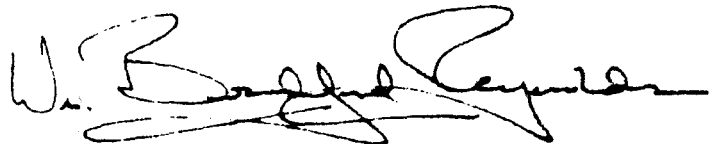
Additionally, we have received allegations that the state used criteria for drawing senate districts in Harris County which differ from the criteria used in drawing senate districts in Dallas County. The claim is that in Harris County the state divided the minority communities among several districts so as to create districts in which minorities could have an "impact" even if they could not elect candidates of their choice. In Dallas County, the minority community apparently was treated as a "community of interest" and the plan seems to recognize the potential of that community to elect candidates of their choice to the senate. The state has presented no information to demonstrate why such divergent criteria were employed or to establish that the use of the seemingly inconsistent criteria does not have a discriminatory effect.

Since the state has failed to demonstrate that the plan is nondiscriminatory it is necessary to interpose an objection. We note, however, that the concerns that lead to this decision are based, in large part, on our being unable to reach the conclusion that the allegations of racial and ethnic discrimination have been sufficiently refuted on the basis of the information presently before us. Thus, if the state can present evidence which satisfactorily addresses the issues that have been raised by the complaints referred to above, we would be willing to reconsider this objection pursuant to the applicable provisions of the Procedures for the Administration of Section 5. See, 28 C.F.R. §51.44. If you desire, our staff is also available to meet with you and other state officials to discuss these concerns.

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. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of this objection is to render the redistricting of the Texas Senate as authorized by the Legislative Redistricting Board's Plan Number 1 legally unenforceable.

If you have any questions concerning this letter, please feel free to call Carl Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds", written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Hon. Mark White
Attorney General
State of Texas

WBR:GWJ:PFH:DSC:bhq
DJ 166-012-3
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81-0298

23 FEB 1982

Honorable Mark White
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711

Dear Mr. Attorney General:

This is in response to your letters dated February 8, 1982 and February 9, 1982 requesting reconsideration of the Section 5 objections interposed on January 25 and 29, 1982. As you know, this Department has recognized the Secretary of State as the official of the State of Texas responsible for submitting the congressional and legislative redistricting plans. Thus we cannot treat your letters of February 8 and 9 as requests for reconsideration of the objections at issue.

However, by letter dated February 9, 1982, the Secretary of State has requested that we reconsider the objections and that review process is currently underway. Your letters and supporting information will be considered in the course of our review and we invite you to submit whatever additional information you deem relevant.

I am enclosing for your information a copy of a letter which we have sent to the Secretary of State regarding the objections of January 25 and 29, 1982.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: William P. Hobby
Lieutenant Governor