



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

February 27, 1989

Mary Milford, Esq.
Law Offices of Earl Luna, P.C.
4411 Central Building
4411 N. Central Expressway
Dallas, Texas 75205

Dear Ms. Milford:

This refers to six branch absentee voting location changes, three additional absentee voting locations, and the implementation schedule for the November 8, 1988, general election for Dallas 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 December 28, 1988, and February 8, 16, and 22, 1989.

We have reviewed carefully the information you have provided, as well as Census and other available statistical data and comments from other interested parties. At the outset, we note the very abbreviated schedule allowed by the county for our review under Section 5 of the changes presently before us. We initially received eight of the changes on September 9, 1988, just 60 days prior to the November 8, 1988, general election. Those changes were scheduled to be and, in fact, were implemented beginning October 14, which, in turn, was only 11 days after final adoption of the changes. The period for absentee voting by personal appearance ended November 4, 1988. The remaining two changes at issue were not adopted until October 31, and we received that submission on November 3, 1988, two days after the county implemented the additional changes and the day before such absentee voting was to end.

During the course of our review, our staff orally informed county officials that the proposed changes were legally unenforceable absent the requisite Section 5 preclearance and that there was substantial concern that the proposed changes would discriminate against minority voters. Thus, it appears that although the county was well aware of the Section 5 preclearance requirements, it took no steps to ensure that its decisions could be adequately reviewed prior to implementation. The county apparently intended to, and, in fact, did proceed with these changes without obtaining the requisite Section 5 preclearance.

The November 1988 election was the first general and Presidential election conducted under the Texas law that eliminates most restrictions on absentee voting by personal appearance. Thus, any person who was eligible to vote on November 8, 1988, was also eligible to vote by personal appearance during the absentee voting period from October 19 through November 4, 1988. Under precleared state law, there is no limit on either the number or the location of branch absentee voting sites that the county may establish for absentee voting by personal appearance. We note, as well, that Anglo and minority (both black and Hispanic) residents of Dallas County are not similarly situated socio-economically, since blacks and Hispanics lag significantly behind Anglos in income, education, occupational status and electoral participation.

These factors are of particular relevance here, in that when the county evaluated its absentee voting locations for the November 8, 1988, general election, the five then existing branch absentee voting locations which were retained were all in predominantly Anglo areas. Furthermore, in moving the remaining branch absentee voting locations, the county relocated each site to a predominantly Anglo area, including the Lancaster Library site, which is relocated from the Cummings Recreational Center location in a predominantly minority area. The county commissioners court also approved two additional absentee voting locations, each in a predominantly Anglo area. These actions occurred subsequent to requests by persons representing the minority communities for absentee voting locations in areas with highly concentrated black and Hispanic populations.

Only after what appears to have been significant pressure from the black community did Dallas County agree to place an absentee voting site in a location convenient to some blacks. Even so, the establishment of that site, the Martin Luther King Jr. Recreational Center, as an absentee voting polling place (a choice that has received Section 5 preclearance) appears to have been contingent on the establishment of yet another absentee voting location in another predominantly Anglo area (Lake Highlands). Moreover, notwithstanding that there were fewer than five days remaining in the absentee voting period and that the county elections department was prepared to open the Martin Luther King Jr. Center site immediately upon its approval

as an absentee polling place, the county nevertheless delayed opening that absentee voting site until after the occurrence of an event which, as the county was fully aware, would have provided many black voters with a convenient opportunity to vote absentee by personal appearance at the Martin Luther King Jr. Center site.

Based on the information you have provided, it appears that the county also relied on past absentee voter turnout, which it avers has been low in minority communities, and current registration strength in adopting the proposed changes in its absentee voting program. Past absentee turnout at these locations is an unreliable measure for the general election since only non-countywide and special elections had been conducted under the state's unrestricted absentee eligibility law prior to November 8, 1988. Furthermore, it appears that past low levels of absentee voting by minority citizens may be attributable in part at least to the lack of convenient absentee polling places and stricter eligibility requirements at earlier elections. With regard to the criterion of registration strength, the available information indicates that within five geographical areas of the 24th Congressional District, the predominantly minority area of East Oak Cliff/West Dallas had 76,349 registered voters, but was not served by any convenient absentee voting location, while each of the other four areas, which is predominantly Anglo, had significantly fewer registered voters, but was served by an absentee voting location.

Finally, it should be pointed out that we had previously expressed concern about the legal propriety of these criteria. When the county used very similar criteria to establish its ballot allocation formula for the November 1982 general election, our investigation of complaints led us to advise the county that operation of the formula had had a disparate effect on minority voters by precluding many minority citizens from voting. We advised the county that continued use of the formula would, in our view, clearly violate Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973.

While we recognize that the state's revised absentee voting law greatly expands the opportunity for registered voters to exercise their franchise, county officials have the responsibility of ensuring that this expanded opportunity is provided equally to all electors in Dallas County. The county's timetable for and delay in addressing the implementation of the new state law for the 1988 general election necessarily precluded an adequate preimplementation opportunity for the Attorney General to review the voting changes that the county

proposed under the new law. However, information we have received on the absentee voting results from the proposed voting locations for the 1988 election lend significant support to the concerns that have been raised about the failure of the absentee voting program to provide black and Hispanic voters an opportunity equal to that of Anglo voters to cast absentee ballots under the new expansive Texas procedure.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that the submitted changes have no discriminatory purpose or 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(c)). In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. The program for absentee voting by personal appearance operated by Dallas County for the 1988 general election cannot be precleared under Section 5 at this time nor, in view of the circumstances involved here, could it have been even had it been timely submitted prior to its implementation on October 14 and November 1, 1988. Therefore, on behalf of the Attorney General, I must object to the six branch absentee voting location changes, the three additional branch absentee voting locations, and the implementation schedule therefor, to the extent that it delayed absentee voting at the Martin Luther King Jr. Recreational Center until November 1, 1988.

In addition to interposing an objection to the use in the 1988 election or in any future election of the proposed system, we feel a responsibility to advise the county of its duty in the future to obtain Section 5 preclearance prior to implementation of changes of this nature and that, in light of this experience, we will feel constrained to interpose an objection to, and seek court enforcement as needed to prevent, future implementation of any untimely submitted changes in the absentee voting program. In that regard, we are studying the circumstances to determine if it will be necessary or appropriate to seek a court-ordered remedy as to the 1988 actions.

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 changes legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Dallas County plans to take with respect to these matters. If you have any questions, feel free to call Ms. Lora L. Tredway (202-724-8290), Attorney-Reviewer in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Mr. Bruce R. Sherbet
Dallas County Elections Administrator