



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

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MAR 17 1992

Dear Mr. Morrison:

This refers to the 1991 redistricting plans for commissioners court districts, and justice of the peace and constable districts; a realignment of precincts; the elimination of six voting precincts; and the establishment of three new polling places and the elimination of nine polling places for Calhoun 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 responses to our request for additional information on December 23, 1991, and January 17, 1992.

We have considered carefully the information you have provided, as well as comments from other interested persons. At the outset, we noted that according to the 1990 Census, Hispanics constitute 36 percent of the county's population and are principally concentrated in the City of Port Lavaca, where about three-quarters of the county's Hispanic population resides. In the proposed redistricting of the commissioners court districts, as well as in the plan for justices of the peace and constables, the Hispanic community in the city is fragmented among four districts (we note that the two plans are identical except that Anglo-majority District 4 in the commissioners court plan is split into two districts in the justice/constable plan). The resulting plan includes one district (District 2) that is majority Hispanic in population and voting age population (59% and 56%, respectively), but the county's registration data indicate that Hispanics would be a minority of the district's registered voters. In light of the apparent pattern of polarized voting in county elections, there is substantial doubt that this district will afford Hispanic voters the opportunity to elect their preferred candidate.

Our review further reveals that during the redistricting process Hispanic leaders indicated that Hispanic voting strength would be more fairly represented by providing that District 1, rather than District 2, be drawn as the Hispanic majority district. Support for this position is found in the fact that during the 1980s there was substantial Anglo growth in District 2 while the Hispanic population declined slightly, and we understand that this demographic change is continuing. In District 1, however, the Hispanic population increased while the Anglo population decreased. During the redistricting process, Hispanic leaders drew the county's attention to these demographic trends and the need for a somewhat larger Hispanic majority than proposed in order to provide Hispanic voters a realistic opportunity to elect their preferred candidate. It appears that the county understood that there were readily available alternatives that would address these concerns, yet the county has not provided any nonracial explanation for their rejection.

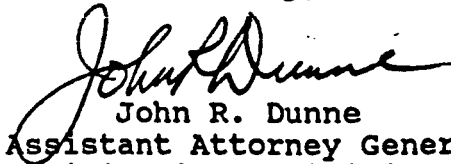
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance with respect to the commissioners court and justice of the peace/constable redistricting plans. Therefore, on behalf of the Attorney General, I must object to these changes.

With respect to the precinct and polling place changes, the Attorney General will make no determination since these changes are directly related to the redistricting plans. 28 C.F.R. 51.35.

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 objected-to 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, you may 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 objected-to changes continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

In this regard, we understand that contrary to the express proscription of the Voting Rights Act, the county implemented the unprecleared redistricting plans in the March 10, 1992, primary election. Accordingly, to enable us to meet our responsibility to enforce the Act, please inform us within ten days of the action Calhoun County plans to take concerning these matters. Please contact Mark A. Posner, an attorney in the Voting Section, at (202) 307-1388.

Sincerely,

  
John R. Dunne  
Assistant Attorney General  
Civil Rights Division