



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 6, 1992

Honorable Marilyn Cox
Bailey County Judge
300 South 1st Street
Muleshoe, Texas 79347

Dear Judge Cox:

This refers to the 1991 redistricting plans for commissioners court and justice of the peace/constable districts, the realignment of voting precincts, and a polling place change in Bailey 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 January 30, 1992, letter on February 6, 1992.

We have carefully considered the information you have provided, as well as 1990 Census data and information from other interested parties. We note that between 1980 and 1990 the Hispanic share of Bailey County's population increased from 33.9 to 38.8 percent. Nevertheless, the Hispanic share of the population in District 4, the only district with a Hispanic population majority, decreases from 69.3 percent under the existing plan to 64.2 percent under the proposed plans.

We recognize that the 1990 Census revealed that District 4 was underpopulated. Our review of the county's demography reveals, however, that a five percentage point reduction in the Hispanic share of the population in District 4 was not necessary to comply with the one person, one vote requirement of the United States Constitution. Moreover, in light of the existing Hispanic registration levels in the county and District 4 in particular and our analysis of the results of the 1990 primary election involving an unsuccessful Hispanic candidate, the proposed plans' reduction in the Hispanic share of the population in District 4 would appear to lessen the opportunity for Hispanics to elect representatives of their choice. See Beer v. United States, 425 U.S. 130 (1976).

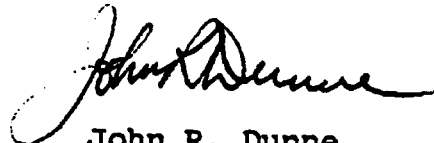
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In light 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 1991 redistricting plans for county commissioner and justice of the peace/constable districts.

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 changes have 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 plans continue to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

Because the voting precinct realignment and polling place change are dependent upon the objected-to redistricting plans, the Attorney General will make no determination with regard to them. 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 Bailey County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division