U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

April 6, 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1991 redistricting plan for commissioners court districts and the realignment of voting precincts in Cochran 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 February 6 and March 19, 1992.

We have considered carefully the information you have provided, as well as 1990 Census data and information from other interested persons. According to the 1990 Census, Hispanics constitute 42.4 percent of the county's total population and 36.1 percent of its voting age population. The existing commissioner districts were drawn based upon 1970 Census data, which showed that 28.4 percent of the total population in Cochran County was Hispanic. Thus, there has been a substantial increase in Cochran County's Hispanic population since the Census upon which the existing plan was based.

Approximately three-quarters of the county's Hispanic residents are concentrated in the town of Morton. Under the existing district boundaries this concentration of Hispanic population in Morton is divided among several districts so that in District 4, the only district with a Hispanic population majority, Hispanics make up 58.6 percent of the total population and 51.2 percent of the voting age population according to the 1990 Census. Your submission included a report prepared by Allison and Associates, which stated that "[t]here does appear to

be some fragmentation of minority population in the Town [of] Morton which should be addressed when bringing the population balance of [District] No. 4 into compliance."

Notwithstanding this advice, the proposed redistricting plan continues significantly to divide the Hispanic community in Morton, resulting in a reduction in the Hispanic share of the population in District 4 of nearly two percentage points (to 56.7%). The county has failed adequately to explain this reduction in the Hispanic population percentage of the proposed plan's most heavily Hispanic district. Indeed, our analysis of the county's demography indicates that such a reduction was unnecessary to satisfy legitimate redistricting criteria.

In this regard, we note that the county commissioners considered and rejected two alternative plans prepared by its consultant. Both of these plans, in addition to the proposed redistricting plan, appear to have imposed a 65 percent ceiling on total minority population within each district. In light of the county's demography, the lower rates of political participation among Hispanics acknowledged in your submission and the apparent polarization in voting in the county, we do not believe such an approach to redistricting has been justified.

Finally, concerns have been raised about the nature and extent of minority participation in the county's redistricting process. In particular, it does not appear that the county's initial redistricting discussions were publicized or that the county made any direct effort to notify and involve the minority community in the redistricting process until a proposed plan was already prepared.

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 redistricting plan. Therefore, on behalf of the Attorney General, I must object to these changes.

Because the realignment of the voting precincts is directly related to the objected-to redistricting plan, the Attorney General will make no determination at this time with regard to that matter. 28 C.F.R. 51.22(b).

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 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, 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.

To enable us to meet our responsibility to enforce the Act, please inform us of the action Cochran County plans to take concerning this matter. If you have any questions, you should call Robert A. Kengle, an attorney in the Voting Section, at (202) 514-6196.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 6, 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to your May 1, 1992, requests that the Attorney General reconsider the objections interposed under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1991 redistricting plans for the commissioners courts in Castro, Cochran, Deaf Smith, Hale, and Terrell Counties, Texas and the redistricting plan for the commissioners court and for justices of the peace and constables in Bailey County, Texas. We received your requests on May 4, 1992.

As you are aware, the redistricting plans for these Texas counties were separately submitted for Section 5 review and were the subject of separate Section 5 determination letters. The instant reconsideration requests, however, are identical and accordingly we are responding to all the requests by this letter. The requests allege that the Attorney General applied an improper standard in interposing these Section 5 objections and indicate that supporting information will be provided after the Department responds to the Freedom of Information Act requests that have been filed with regard to the Department records associated with the objections. In this regard, we note that we currently are processing the FOIA requests and should respond to all the requests shortly. The reconsideration requests otherwise do not offer any specific reasons why the objection analyses may have been flawed or present any data or other information to support withdrawal of the objections.

Section 51.48 of the Procedures for the Administration of Section 5 specifies that "[t]he objection shall be withdrawn if the Attorney General is satisfied that the change does not have the purpose or effect of discriminating on account of race, color, or membership in a language minority group." See also Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. The instant requests do not establish any basis for concluding that the counties have met their burden in this regard, and our review of the objections indicates that we applied the statutory standards contained in Section 5 in interposing the objections. Accordingly, on behalf on the Attorney General, I decline to withdraw the objections to the commissioners court redistricting plans for Castro, Cochran, Deaf Smith, Hale, and Terrell Counties, Texas, and the objection to the redistricting plan for the commissioners court and for justices of the peace and constables for Bailey County, Texas.

As previously noted in the objection letters, Section 5 provides that the counties may 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, the counties may at any time renew their requests that the Attorney General reconsider the objections. 28 C.F.R. 51.45.

We wish to emphasize, however, that unless and until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plans to which objections have been interposed are legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45. We note that each of the counties requesting reconsideration implemented its unprecleared 1991 plan in the 1992 primary election, contrary to the express requirement of Section 5 that no voting change may be implemented without first obtaining Section 5 preclearance either from the Attorney General or the District Court for the District of Columbia.

Accordingly, to enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that Bailey, Castro, Cochran, Deaf Smith, Hale, and Terrell Counties plan to take to place themselves in compliance

with the Act. If you have any questions, you should call Mark A. Posner, Section 5 Special Counsel in the Voting Section, at (202) 307-1388.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division