U.S. Department of Justice

Civil Rights Division

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

APR 10 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 the commissioners court, and the realignment and renumbering of voting precincts for Hale 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 10 and March 25, 1992; other supplemental information was received on March 6 and 30, 1992.

We have considered carefully the information you have provided, as well as information from other interested persons. As documented by the 1980 and 1990 Censuses, the Hispanic share of the county population rose substantially in the past decade, from 34 percent in 1980 to 42 percent in 1990. This increase similarly was reflected in the existing commissioners court districts. In particular, the Hispanic proportion in District 2 increased from a bare Hispanic majority of 54 percent to 67 percent, giving Hispanic voters a significant opportunity to elect a candidate of their choice to the commissioners court.

The proposed plan reduces the Hispanic population percentage in District 2 by nine percentage points (to 58%) while it increases the Hispanic share of the population in District 1 from 42 to 57 percent. The registration data compiled by the State of Texas reveal that Hispanics would not constitute a majority of the registered voters in either district in the new plan. On the other hand, the data show that Hispanics are nearly a majority of the registered voters in existing District 2.

Our analysis indicates that the malapportionment in the existing commissioners court districts may be remedied with little or no reduction in the Hispanic percentage in District 2 and with no meaningful alteration to the districting configuration selected by the county. This may be accomplished principally by minimizing the proposed plan's fragmentation of the Hispanic population in Plainview between Districts 1 and 2. It also appears that such a plan would continue to provide Hispanic voters the opportunity to exert a substantial influence in District 1 elections. In light of the apparent pattern of polarized voting in local elections, the proposed plan would appear to "lead to a retrogression in the position of ... minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). In addition, the county has failed to provide an adequate nonracial explanation for its redistricting decisions.

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 this change.

Because the realignment and renumbering of the voting precincts are directly related to the objected-to redistricting plan, the Attorney General will make no determination at this time with regard to these matters. 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 proposed redistricting plan continues 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 Hale County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner, an attorney in the Voting Section, at (202) 307-1388.

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