



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 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 of voting precincts for Deaf Smith 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, March 23, and March 26, 1992.

We have considered carefully the information you have provided, as well as information from other interested persons. According to the 1990 Census, Hispanics constitute 49 percent of the county's population and are principally concentrated in the City of Hereford. In the proposed redistricting plan, the county divides the Hispanic population in Hereford among three districts. In light of the apparent polarization in voting, Hispanic voters appear to have an opportunity to elect a candidate of their choice only in one district. That district, District 2, is 69.0 percent Hispanic in population in the existing plan and is increased to 69.8 percent Hispanic in the proposed plan. In 1990, the district elected the first Hispanic commissioner in modern times, after unsuccessful Hispanic candidacies in 1982 and 1986 in the district.

The remainder of Hereford's Hispanic population is divided between proposed Districts 1 and 4 which are 60.5 percent and 49.0 percent Hispanic, respectively. The county's registration data suggest that Hispanics will not have a registration majority

in either district, although they would approach that level in District 1. We note that Hispanic candidates have run unsuccessfully in that district in the past three elections, including most recently the 1992 Democratic primary where the county implemented the proposed plan contrary to the requirements of Section 5. Clark v. Roemer, 111 S.Ct. 2096 (1991).

It appears that the Hispanic population percentage in District 1 could have been increased (by several percentage points) to allow Hispanic voters the opportunity to elect a candidate of their choice in this district by reducing the fragmentation of the Hispanic population in north Hereford between Districts 1, 2, and 4. In this regard, we note that the county's submission indicates that it was fully aware of the fragmentation occasioned by the proposed plan. Nevertheless, the county has failed adequately to justify its districting decisions in this regard.

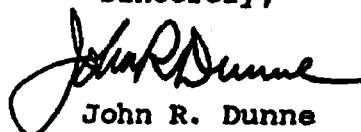
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 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 precinct realignment is directly related to the objected-to redistricting plan, the Attorney General will make no determination at this time with regard to this 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 proposed redistricting plan continues to be legally unenforceable. Clark v. Roemer, supra; 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 Deaf Smith 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,

A handwritten signature in cursive script, appearing to read "John R. Dunne".

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 (1972); 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 of 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.

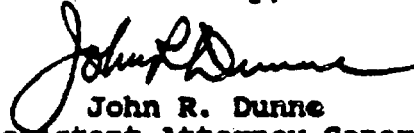
As previously noted in the objection letters, Section 5 provides that the counties may seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to changes have neither the purpose nor will have the effect of denying or abridging the right to vote 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