U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

OCT 6 1992

Robert Bass, Esq.
The Wahrenberger House
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1992 redistricting plan for the commissioners court of Castro 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 submission on September 4, 1992; supplemental information was received on September 28 and 30, and October 1, 1992.

We have carefully considered the information you have provided, as well as information provided by other interested persons. According to the 1990 Census, Hispanics constitute 46 percent of the population, 39 percent of the voting age population, and 34 percent of the citizen voting age population. No Hispanic person has been elected to the commissioners court. As you are aware, on March 30, 1992, the Attorney General interposed an objection under Section 5 to the initial redistricting plan adopted by the commissioners court following the 1990 Census. In the objection letter, we concluded that the county had not "provided any nonracial explanation for its failure to adopt a plan which includes at least one viable Hispanic majority district." We noted in that regard that county elections appear to be characterized by a pattern of polarized voting, and that while two districts in the 1991 plan were majority Hispanic in population and voting age population (Districts 1 and 3), it appeared that Hispanics did not constitute a majority of the eligible voting age population in either district because of the presence of a noncitizen Hispanic population in the county. We also noted our understanding that noncitizens are particularly concentrated in two areas of migrant farmworker housing, Azteca apartments and Coronado Acres.

Despite the absence of Section 5 preclearance, the county used the 1991 plan for the March 10, 1992 primary for commissioner Districts 1 and 3. We understand that it is preparing to hold the November general election pursuant to this plan as well. Section 5 expressly provides that covered jurisdictions, such as Castro County, Texas, may not implement

any change in a voting practice or procedure until preclearance is obtained, either from the Attorney General or the United States District Court for the District of Columbia. The Supreme Court has repeatedly held that Section 5 means what it says. E.g., Clark v. Roemer, 111 S.Ct. 2096 (1991); Hathorn v. Lovorn, 457 U.S. 255 (1982); United States v. Board of Supervisors of Warren County, 429 U.S. 642 (1977)(per curiam); Allen v. State Board of Elections, 393 U.S. 544 (1969). See also Procedures for the Administration of Section 5 (28 C.F.R. 51.10). "A voting change in a covered jurisdiction 'will not be effective as la[w] until and unless cleared' pursuant to one of these two methods." Clark v. Roemer, supra, 111 S.Ct. at 2101, quoting Conner v. Waller, 421 U.S. 656 (1975)(per curiam). Although as of the March 10, 1992 primary date, the Attorney General had not yet ruled on the county's preclearance request, preclearance -- and not the absence of a Section 5 determination -- is the necessary prerequisite for the implementation of a covered voting change, and in our December 6, 1991 request for additional information we specifically advised the county that the plan was unenforceable until preclearance was received. Furthermore, the illegal implementation of the redistricting plan in the primary election does not validate continued implementation in the general election. Clark v. Roemer, supra, and 111 S.Ct. 399 (1990).

Against this backdrop, the county adopted and now seeks Section 5 preclearance for a revised redistricting plan. The proposed plan, like its predecessor, includes two districts with Hispanic population majorities. Both include a district that is 65 percent Hispanic in population (District 2 in the 1992 plan; District 3 in the objected-to plan) and a district (District 1 in both plans) that is between 55 and 60 percent Hispanic (the new plan drops the Hispanic population percentage in this district by two percentage points from the objected-to plan).

The county's decision to shift the location of the district with the highest Hispanic population percentage from District 3 in the objected-to plan to District 2 was not required in order to remedy the concerns that led us to interpose an objection to the 1991 plan. This shift is significant since, pursuant to the county's system of staggered terms, District 3 is to elect its commissioner this year while the District 2 position will not be up for election until 1994. Our review indicates that the county specifically adopted this change in an attempt to validate the implementation of the unprecleared plan in this year's elections. The shift would have the necessary effect of delaying for two years the opportunity afforded Hispanics to elect a candidate of their choice while enabling the county to argue that no real harm would flow from the continued implementation of the objected-to plan in this year's elections since no election would be scheduled in the district with the highest Hispanic population

percentage. In this regard, our analysis indicates that reasonable redistricting alternatives are available in which District 3 would offer Hispanic voters a realistic electoral opportunity. Furthermore, there is no claim that the proposed delay is being undertaken to benefit the Hispanic community (e.g., to permit Hispanics to conduct additional voter registration drives).

In adopting Section 5 of the Voting Rights Act of 1965, Congress took the extraordinary step of reversing the usual presumption that laws validly adopted by state and local governments are effective unless judicially enjoined so as to "shift the advantage of time and inertia from the perpetrators of the evil [of discrimination] to its victims." South Carolina v. Katzenbach, 383 U.S. 301, 328 (1966). Castro County's attempt to validate its illegal implementation of the 1991 plan and delay the provision of an electoral opportunity to its Hispanic residents does not comport with this central Section 5 principle.

Under Section 5, 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 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. Therefore, on behalf of the Attorney General, I must object to the 1992 redistricting plan for the commissioners court.

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 redistricting plan 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 1992 redistricting plan for the commissioners court 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 Voting Rights Act, please inform us of the action Castro County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), Special Section 5 Counsel in the Voting Section. Because the implementation of the objected-to plan is being addressed in the consolidated cases of Valdez v. Castro County, Texas, C.A. No. 2-92-CV-168

(N.D. Tex.), and Crespin v. Castro County, Texas, C.A. No. 2-92-CV-202 (N.D. Tex.), we are providing a copy of this letter by telefaxsimile transmission to the members of the three-judge court and plaintiffs' counsel in these cases.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable William L. Garwood
Honorable Mary Lou Robinson
Honorable Eldon B. Mahon

Rolando Rios, Esq.
William L. Garrett, Esq.
Judith Sanders-Castro, Esq.
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