



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

July 19, 1993

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

Dear Mr. Bass:

This refers to the reduction in the number of justice of the peace and constable districts from four to one and the implementation schedule 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 March 16, 1993, request for additional information on May 19, 1993.

We have carefully considered the information that you have provided as well as 1990 Census data, comments from other interested persons and information contained in previous Section 5 submissions concerning Bailey County's justice of the peace and constable districts. According to the 1990 Census, Hispanic residents constitute 38.8 percent of the county's total population and 32.6 percent of the voting age population. Under the county's existing electoral system, there are four justice of the peace/constable districts, which coincide with the county's commissioner's court districts as they existed before we precleared the 1992 commissioner's court redistricting.

In 1992, we interposed a Section 5 objection to the county's 1991 redistricting plan, noting concerns about how District 4 was drawn in light of the apparent pattern of polarized voting in county elections and the recent, narrow defeat of a candidate preferred by Hispanic voters. The county subsequently revised its plan by increasing the Hispanic share of the population in District 4 to 70 percent (63 percent voting age population). We precleared the revised plan earlier this year.

Under the precleared plan, Hispanic voters would appear to have a good opportunity to elect their chosen candidates in District 4. But for the proposed reduction in the number of justices of the peace and constables, that opportunity would extend to the offices of justice of the peace and constable as there is no indication that the county would have departed from its historic pattern of matching its justice of the peace and constable districts with those used to elect county commissioners.

Concerns have been raised about the timing of the decision and the nature and extent of minority participation in the county's decision-making process that led to the proposed change. The decision to reduce the number of justices of the peace and constables followed our 1992 objection and came on the heels of a settlement in a lawsuit which produced a new commissioners court plan that enhances Hispanic voting potential.

In support of the proposed reduction the county notes that it has a long-standing practice of allowing the justice of the peace elected from District 1 to perform essentially all justice of the peace duties throughout the county. The county contends that the proposed reduction has been undertaken to consolidate justice of the peace and constable duties because the existing four positions are not necessary to fulfill the county's needs. While it may be true that having one justice of the peace instead of four might result in some economies, it is not clear how much money would be saved, since the projected cost savings, as we understand them, refer to potential costs if the existing system were successfully challenged in litigation. Nor did the county appear to consider the possibility of having two or three justices of the peace/constables instead of four as a means of saving costs while recognizing existing electoral opportunities for Hispanic voters. Under these circumstances, we cannot conclude that the county's proffered explanations for the proposed reduction have been justified.

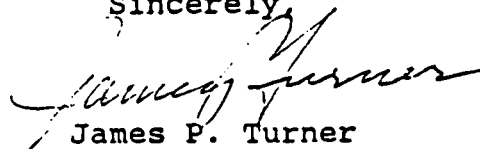
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light 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 submitted reduction in the number of justice of the peace and constable districts from four to one.

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 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. See 28 C.F.R. 51.11 and 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed reduction in justice of the peace and constable districts continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the submitted implementation schedule is directly related to the objected-to change, no determination by the Attorney General regarding the schedule is appropriate at this time. 28 C.F.R. 51.22(b).

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,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division