U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

May 9, 1994

The Honorable John Hannah, Jr.
Secretary of State
Elections Division
P. O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to Chapter 1032 (1993), which creates a fourth district court judgeship in Midland County, the 385th Judicial District Court, to be elected at large by designated position with a majority vote requirement for the State of 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 September 24, 1993, request for additional information on March 10, 1994.

We have given careful consideration to the information you have provided, as well as 1990 Census data, comments received from interested persons, and information contained in the state's earlier submission of the creation of additional judicial district courts in other Texas counties and the record in relevant judicial decisions. In Midland County, Hispanic persons constitute 21 percent of the total population and 18 percent of the voting age population. Black persons comprise eight percent of the county's total population and seven percent of the voting age population. Our review of the county's electoral history indicates that black and Hispanic voters are politically cohesive and that county elections are characterized by racially polarized voting patterns.

The election of district court judges by numbered judicial districts functions as a numbered post requirement and has the effect of eliminating the ability of minority voters to utilize single-shot voting. We further note that nomination for this new judicial post is subject to the general requirement in Texas law that a successful candidate must obtain a majority of the votes cast in a party primary. Numerous federal court decisions have chronicled instances where at-large elections, numbered post

requirements, and the runoff system have been adopted in Texas with clearly discriminatory motives, and where their use has produced the intended discriminatory results.

We have analyzed the state's decision to expand the at-large election system in Midland County against this backdrop. We recognize that the state has asserted that it has an interest in adding a fourth judgeship to the circuit in order to relieve an overcrowded court docket. However, the state has not shown that serving that interest need be tied to expanding the existing at-large method of electing district court judges.

Prior to the state's adoption of the change at issue in this submission, the Attorney General had interposed an objection to the expansion of the at-large system in the creation of nine other district court judgeships in the state. In our November 5, 1990, objection letter, we noted that a review of legislative discussions in 1989 revealed that it was commonly understood among Texas legislators that the election of district court judges at large and by numbered post, subject to a runoff requirement, has a racially discriminatory impact. Legislative hearings in March and April of 1993 confirm the widespread view among Texas legislators that the method of electing district court judges in Texas dilutes minority voting strength. Thus, it appears that in creating the 385th Judicial District in Midland County in 1993, the state understood that the method of electing the proposed judgeship would have a racially discriminatory impact but decided to use this election scheme rather than an alternative method of selecting judges that would be fair to racial and ethnic minorities.

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); 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 your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the creation of the 385th Judicial District Court in Midland County.

In reaching our decision, we are not unmindful of the recent decision of the United States Court of Appeals for the Fifth Circuit in League of United Latin American Citizens v. Clements, 999 F.2d 831 (5th Cir. 1993) (en banc), cert. denied, 114 S. Ct. 878 (1994), which held that the method of electing district court judges in Midland and other counties in Texas does not violate Section 2 of the Voting Rights Act. We note, however, that the court did not make findings on the issue of whether racial

purpose underlies the adoption or maintenance of the method of electing district court judges in Midland or other Texas counties. Moreover, the LULAC decision does not affect the legal standards to be applied when jurisdictions seek preclearance of voting changes under Section 5. See, e.g., City of Richmond v. United States, 422 U.S. 358, 373-374 n.6. (1975). Thus, in light of our conclusion that the state has failed to meet its burden of showing that the change under submission is not designed to dilute minority voting strength, it is unnecessary to reach the question of whether use of the at-large election system with numbered posts and a majority vote requirement would violate Section 2 of the Voting Rights Act. See 28 C.F.R. 51.55.

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 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. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the creation of the 385th Judicial District Court in Midland County continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas intends 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,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division