



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 31, 1994

Ms. Mary Anne Wyatt
Golden Crescent Regional
Planning Commission
P. O. Box 2028
Victoria, Texas 77902

Dear Ms. Wyatt:

This refers to the creation of the Gonzales County Underground Water Conservation District; the districting plan; the establishment of polling places; the procedures for conducting the May 7, 1994, special election for the confirmation of the creation of the district, the approval to assess an ad valorem tax, and the election of directors; and the arrangement that Gonzales County conduct the May 7, 1994, special election for the district in Gonzales 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 request for additional information on August 30, 1994; supplemental information was received on October 18, 19 and 27, 1994.

The Attorney General does not interpose any objection to the creation of the Gonzales County Underground Water Conservation District; the procedures for conducting the May 7, 1994, special election for the confirmation of the creation of the district and the approval to assess an ad valorem tax; and the arrangement that Gonzales County conduct the May 7, 1994, special election for the district. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the districting plan, we carefully have considered the information that you have provided, as well as information provided by other interested persons. According to your submission, the Gonzales County Underground Water Conservation District has a total population of 16,587, of whom 36.5 percent are Hispanic and 9.4 percent are black.

The water district's directors will be elected from five single-member districts. The proposed districting plan provides for districts which are grossly malapportioned. The City of Gonzales comprises a single district that is two and a half times the size of any of the other districts (6,547 versus 2,611). That district contains nearly half of the minority population in the entire water district, but still has an Anglo voting age majority. Indeed, despite the large minority population, the proposed districting plan creates only one district with a majority combined voting age population, and even that majority (51.4 percent) appears too narrow to provide minority voters with an equal opportunity to elect candidates of their choice. The consequence of the proposed districting plan is that minority voting strength is diluted.

Those involved in drawing these districts were aware, if only from extensive media coverage on the subject, of the need to protect minority voting rights specifically where water districts are involved. Nevertheless, the minority community appears effectively to have been frozen out of the process which produced the proposed districting plan. None of the public hearing or meeting notices were posted in Spanish. There was no attempt to involve the minority community in the process or solicit their views with regard to particular boundary line choices. Nor was any attempt made to explore possible alternative districting plans that would have allowed minority voters an equal opportunity to participate in the electoral process and to elect candidates of their choice. For example, it appears that under a fairly drawn plan of single-member districts, minority voters would constitute effective majorities in two of the five districts.

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). The existence of some legitimate, nondiscriminatory reasons for the voting change does not satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In addition, the Section 5 Procedures (28 C.F.R. 51.55(b)(2)) require that preclearance be withheld where a change presents a clear violation of the results standard incorporated in Section 2 of the Voting Rights Act, 42 U.S.C. 1973. In light of the

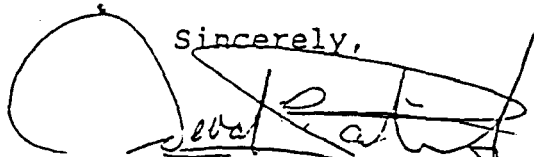
considerations discussed above, I cannot conclude as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed districting plan for the Gonzales County Underground Water Conservation District.

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. 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 districting plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

The Attorney General will make no determination at this time with regard to the establishment of polling places for the districts or the May 7, 1994, election of directors as they are directly related to the districting plan. See 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the Gonzales County Underground Water Conservation District plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval L. Patrick", written over a horizontal line. The signature is stylized and somewhat cursive.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division