



**U.S. Department of Justice**

Civil Rights Division

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Office of the Assistant Attorney General

Washington, D.C. 20530

August 21, 2008

The Honorable Phil Wilson  
Secretary of State  
P.O. Box 12060  
Austin, Texas 78711-2060

Dear Mr. Wilson:

This refers to Chapter 912 (H.B. 2984) (2007), which changes the candidate qualification requirements for the position of supervisor of a fresh water supply district (except for those districts located in Denton County), for the State of Texas submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our May 2, 2008, follow-up request for additional information on June 26, 2008.

We have considered carefully the limited information you have provided, as well as census data, comments and information from other interested parties, and other information, including the state's prior submissions. Under Section 5 of the Voting Rights Act, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority. 42 U.S.C. 1973c; Georgia v. Ashcroft, 123 U.S. 2498 (2003); Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52 (c). As discussed further below, I cannot conclude that the state's burden of proving that Chapter 912 (H.B. 2984) (2007) will not have a retrogressive effect under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Chapter 912.

Your initial submission of September 28, 2007, did not contain the information required to enable us to determine that the proposed change does not have the purpose and will not 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. 51.52 through 51.57. As a result, we made a timely written request for additional information with regard to this submission on November 26, 2007. See 28 C.F.R. 51.37.

Your responses to our request for additional information, received on January 29 and 31, and March 20, 2008, failed to provide the necessary information that was requested, including the name and location of each fresh water supply district affected by the change, and total population for each broken down by race, color, or language minority group percentages, or the name, race, color or minority language group, and telephone number of each incumbent supervisor, and whether such supervisor is or is not an owner of taxable property in the district. Furthermore, the state declined to take a position on concerns that precluding non-landowning registered voters of a fresh water supply district from qualifying as a candidate for supervisor may have a discriminatory purpose or effect.

We sent a follow-up letter requesting additional information on May 2, 2008. In your June 26, 2008, response to our letter, you respectfully reported that you could not provide any additional information. You also requested that we make no determination if the information provided is insufficient to warrant preclearance.

The Attorney General does not have the option of issuing a no determination on this particular submission. See 28 C.F.R. 51.35. The Department is also aware of at least four newly created districts that are operating under the proposed candidate qualifications of Chapter 912.

The submitted data confirms that there are Hispanic supervisors who are known to be non-landowning residents of their district. If the proposed candidate qualifications were implemented, these individuals would be unable to run for reelection. Concerns that the proposed change may have a future retrogressive effect also are raised by statistics that reveal a significant disparity in home and agricultural land ownership rates between Caucasians and minorities in Texas. Without additional data, the Attorney General is unable to assess whether the law would have a discriminatory effect.

Under Section 5 of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Public Law 109-246, 120 Stat. 577 (2006) ("Voting Rights Act"), the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. In failing to provide the information necessary to complete our review of your submission, you have failed to sustain your burden of proof. See Georgia v. United States, 411 U.S. 526 (1971); see also 28 C.F.R. 51.40 and 51.52.

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 neither has 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 Court for the District of Columbia is obtained, Chapter 912 (H.B. 2984) (2007) will continue to be legally unenforceable. 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 plans to take concerning this matter. If you have any questions, you should call Robert Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

A handwritten signature in cursive script that reads "Grace Chung Becker". The signature is written in black ink and is positioned above the typed name.

Grace Chung Becker  
Acting Assistant Attorney General