



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 24 2009

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402 West 12th Street
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The Honorable David Bird
County Judge
414 St. Joseph Street, Suite 200
Gonzales, Texas 78629

Ms. Lee Riedel
County Clerk
P.O. Box 77
Gonzales, Texas 78629

Dear Mr. Bass, Judge Bird, and Ms. Riedel:

This refers to the Spanish language election procedures for the November 2, 2004, November 7, 2006, and November 4, 2008, general elections in Gonzales County, 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 November 26, 2008, follow-up request for additional information on January 23, 2009.

According to the 2000 Census, the county had a population of 18,628 persons, of whom 7,381 (39.6%) were Hispanic, a voting age population of 13,421, of whom 4,705 (35.1%) were Hispanic, and a citizen voting age population of 12,555, of whom 3,585 (29.3%) were Hispanic. The census also indicated that 30.3 percent of Hispanic voting age citizens are limited English proficient, and over three-quarters of the county's Hispanic population speak Spanish at home. Significantly, 1,411 Hispanics live in households in which no one over the age of 14 speaks English "without difficulty." The Texas Secretary of State's February 11, 2009, report indicates that the county has 11,983 registered voters, of whom 3,552 (29.6%) are Spanish surnamed.

On December 7, 1978, the Attorney General informed county officials that no objection would be interposed to the county's proposed bilingual procedures. In describing those procedures, the county represented that "all notices concerning elections are both posted in the courthouse and published in all the county newspapers. All these notices are in Spanish and English." Our review of those notices indicated the translations to be accurate. With regard to the assignment of bilingual poll workers, the county characterized it as based on where they were most needed. It noted that precincts not staffed with "interpreters," as the county then called bilingual assistants, had "either no Spanish speaking people * * * or only 1 to 2." This process resulted in the assignment of at least one individual in 10 (55.6%) of the 18 voting precincts for the November 1976 general election to provide the required oral assistance.

Since December 7, 1978, the county has neither made a submission to the Attorney General of any changes to those procedures to which no objection has been interposed, nor has it obtained a declaratory judgement from the United States District Court for the District of Columbia that any such changes had neither a discriminatory purpose nor would have a discriminatory effect. Accordingly, the 1978 procedures remain the legally enforceable bilingual procedures within the county. Indeed, the county asserts that the benchmark procedures remain in effect.

Our review of the information that you have submitted, however, reveals that, at least since 2004, the county has implemented bilingual procedures, including the process for translating Spanish language documents, provision of Spanish language election notices and publicity, and assignment of bilingual poll workers, which are different from the benchmark procedures. Because of the county's position that the benchmark remains in force or effect, we examine the bilingual practices employed in each election as a one-time departure from the benchmark, and, therefore, as a discrete change. Changes to bilingual election procedures constitute a voting change that are not effective as a matter of law unless and until the county establishes that they do not violate Section 5. *Apache County High School District No. 90 v. United States*, Case No. 77-1518 (D.D.C. June 12, 1980); 28 C.F.R. § 51.13.

We have carefully considered the information you have provided, as well as information from other interested parties. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing 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. As discussed further below, I cannot conclude that the county has sustained its burden of showing that the proposed change does not have a retrogressive effect or a discriminatory purpose. Therefore, based on the information available to us, I object to the voting changes on behalf of the Attorney General.

We first examine the county's provision of election-related materials to voters. In contrast to the benchmark procedures, where the county represented that all notices were in English and Spanish, a significant number of the county's election notices and other documents

containing election-related information were made available only in English over the course of the last three general elections. The county often distributes lists of precincts and polling places only in the English language; notices in the *Cow Country Courier* have not always appeared in a bilingual format. During this time period, the county has published its county-created notice in a bilingual format only once, and that was for the November 4, 2008, election, which was during the pendency of our review of this submission.

We next turn to the adequacy of the county's translation of written material. We recently re-examined the bilingual information submitted with the 1978 submission. That analysis confirms that the translation is understandable. The same cannot be said for the more recent translations. The Spanish language translations of two notices, a document including detailed election-related information for the November 4, 2008, election, and a list of declared write-in candidates for the November 7, 2006, election contain numerous errors that adversely affect their comprehensibility, including portions that are not translated, missing polling place names and addresses, incorrect word choice with confusing or misleading results, misspelled words, and wrong conjugations.

For example, the English version of the November 4, 2008, notice refers to updating information for voter registration purposes:

The Tax Office as Voter's Registrar is still needing 911 addresses. If you are still using the Route and Box information, your voter's registration card has probably been returned to this office. You can obtain your 911 address by calling Golden Crescent at 1-877-917-3911 and then advise the Tax Office at 672-2841.

In the Spanish version of the notice, "The Tax Office as Voter's Registrar is still needing 911 addresses," is completely omitted, as is the phrase "your voter's registration card has probably been returned to this office," in the second sentence. Without this information, the reader would not know that he or she might not have received his or her voter registration card because they did not provide the County Tax Office with the correct 911 address. Therefore, the significance of providing an updated 911 address for voting in the November election would be lost.

We now examine the assignment of bilingual poll workers. Under the benchmark procedures, the county assigned bilingual poll workers to over half of the precincts in 1976. Despite an almost one-third increase in the county's Hispanic population percentage since that time, our examination of the 2004, 2006, and 2008 general elections show that the county has fallen short of that standard in each instance. Both census data and anecdotal evidence indicate that there continues to be a significant need for such assistance. Moreover, the current level of assignment is below the Texas Secretary of States's recommended guidelines that bilingual poll workers be assigned to 14 of the county's 15 voting precincts.

The county contends that its failure to meet the requirements of federal law stems from the failure of the political parties to recommend adequate staffing, and is not the result of any action on the county's part. Although the political parties, not the county, recruit poll

workers, the county must ensure that the election it conducts meets the requirements of federal law, which includes providing adequate oral assistance. See Texas Elec. Code § 272.009. In that regard, the county informs us that it has encountered difficulties in finding bilingual poll workers and has provided a newspaper article quoting county officials expressing that view. Our information, however, is that prior to the November 2008 election several minority individuals and organizations contacted county officials volunteering to help the county meet federal language minority requirements.

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 neither have 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. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the United States District Court for the District of Columbia is obtained, the deviations from the county's 1978 bilingual election procedures described above 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 Gonzales County plans to take concerning this matter. If you have any questions, you should call J. Eric Rich (202-305-0107), an attorney in the Division's Voting Section.

Sincerely,



Loretta King
Acting Assistant Attorney General
Civil Rights Division