

FEB 3 1975

Mr. Richard J. Riley
Cochise County Attorney
Post Office Drawer CA
Bisbee, Arizona 85603

Dear Mr. Riley:

This is in reference to the submission of the Cochise College Board redistricting to the Attorney General pursuant to Section 5 of the Voting Rights Act. The most recent information furnished by you in response to our requests for additional information was received December 5, 1974.

We have given careful consideration to the submitted plan and the supporting information, along with data published by the Census Bureau and information and comments from interested parties. However, on the basis of all the demographic facts presently available to us and the county's legal burden of proving that the submitted plan has neither the purpose nor effect of abridging the right to vote on account of race or color (see 28 C.F.R. 51.19), we have concluded that the proscribed effect well may exist in parts of the plan.

Significant to the Attorney General's determination in this case is the history of this submission. By letter of July 30, 1975, I advised you that the redistricting of the Cochise College Governing Board is a change within the meaning of Section 5 of the Voting Rights Act and legally unenforceable until

Section 5's pre-enforcement review requirements have been satisfied. On October 26, 1973, I received your letter of October 21, 1973, requesting approval of the redistricting and on October 29, 1973, I received the certified true copy of the change furnished by the State Board of Directors for Community Colleges. After preliminary review of those materials, a member of my staff telephonically advised your office on November 16, 1973, that the information furnished was insufficient to enable this Department to evaluate the changes under Section 5 and that specified additional information would be needed to complete the submission. I confirmed that conversation by letter dated December 6, 1973. Your response, dated March 18, 1974, and some additional materials were received by this Department on April 9, 1974. Upon review we found that the additional information furnished at that time did not fully comply with our earlier request and I so advised you by letter dated May 10, 1974, again requesting that the submission be completed.

During the course of a routine pre-election survey, in the Fall of 1974, a member of my staff, in a telephone conversation, again advised you that the requested additional information had not been provided. Your letter of November 1, 1974, was received by this Department on November 8, 1974, but as my staff advised you, and I later confirmed by letter of December 3, 1974, the materials referenced therein, other than the map, were not enclosed. A letter from your office transmitting that material was received December 5, 1974.

While all of the information requested still has not been provided, in view of the protracted pendency of this submission and your indications that the specific information we sought cannot be supplied, we have concluded that no useful purpose would be served by further delaying the Attorney General's determination. Consequently we have proceeded to evaluate the districting plan on the information presently available.

Our analysis of data submitted by your office shows that the lines defining Districts I and V have the effect of fragmenting Spanish Surname concentrations of population in and around the City of Douglas. We have also taken note of the unusual configuration of District V which, although geographically located primarily in the north and center of the county, now extends the entire length of the county in siphoning off what appears to be a significant concentration of Spanish Surname persons located in the county's southern extremity. We have not been presented with any compelling justification for such configuration and our own analysis has revealed none. Moreover, it appears that other logical, rational and compact alternative districting could achieve population equality without such result.

The Voting Rights Act and the Attorney General's guidelines require that the submitting authority demonstrate that a change affecting voting does not have the purpose and will not have the effect of denying or abridging the right to vote on the basis of race or color. (See 38 C.F.R. 31.19.) Lacking the requested information which may have satisfied the College Board's burden of proving the absence of the proscribed racial purpose and effect, and having received information which strongly

suggests the presence of at least an impermissible effect, I must, on behalf of the Attorney General, interpose an objection to the implementation of the submitted Cochise County College Board redistricting plan.

We would like to call your attention, however, to 23 C.F.R. 51.23, which provides for reconsideration of decisions of the Attorney General to object to a submitted change. If your board decides to avail itself of this procedure, we suggest that the statistical information previously requested but not previously relating to the number of persons, by race, was residing in each precinct in the county or its equivalent be provided. In this regard, we note that the statistics for the previous plan were based upon the 1972 Social and Ethnic Survey and we believe that a copy of that survey and of any updates of it as well as a copy of Mr. Altcastater's worksheets which are referred to in his letter of November 1, 1974, may be helpful. Also, an explanation of the choices made by the College Board regarding which precincts to exclude from District I after the determination was made not to preserve the entire City of Douglas in one district and of the reasons for the precinct grouping which comprises the new District V will help us resolve this matter. The Douglas City Council district boundaries and recent election returns from Douglas may help us understand the voting patterns in Douglas.

Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that this plan neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. Until such a judgment is obtained, however, the legal effect

of this objection is to render the districting plan unenforceable. In addition, should you submit a revised plan for districts which the Attorney General does not find objectionable under the Voting Rights Act, it would be appropriate to again hold elections for the affected districts under the constitutionally permissible plan.

Because the Attorney General is charged under the Voting Rights Act with the responsibility for taking necessary legal action to insure compliance with the Act, he therefore requests that you advise this Department within 30 days of the date of this letter as to the steps the Cochise College Board intends to take to comply with the Act and this letter of objection.

I and my staff are available to discuss with you any questions you may have as to the subject matter of this letter.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

FEB 14 1975

Mr. Richard J. Riley
Cochise County Attorney
Post Office Drawer CA
Bisbee, Arizona 85603

Dear Mr. Riley:

This is in further reference to the submission of the Cochise College Board redistricting plan to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965.

Your letter of January 27, 1975, forwarding additional information was received by the Department of Justice January 31, 1975, but did not reach our offices until February 4, 1975, the day after I had, on behalf of the Attorney General, interposed an objection to further implementation of the plan. However, we have analyzed the additional information you sent us and find therein no basis for altering our previous determination that the Board has failed to satisfy its burden of proof that the change does not have an adverse racial purpose or effect. Of course, as I explained in my February 3, 1975, letter, you may wish to seek reconsideration by furnishing the information there outlined or you may seek a declaratory judgment from the District Court for the District of Columbia as permitted by the Voting Rights Act.

I would, at this time, like to correct an error in my letter of February 3, 1975: Mr. Altenstadter's worksheets are referred to in his letter of February 22, 1974, not November 1, 1974, as stated. I apologize for any confusion this error may have caused.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

cc:-Public File (Rm. 920)