



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Ms. Sherry Marcell
Elections Officer
Cochise County Board
of Supervisors
P. O. Box 225
Bisbee, Arizona 85603

NOV 3 1986

Dear Ms. Marcell:

This refers to the 1983 redistricting plan for the Community College District in Cochise County, Arizona, 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 most recent response to our January 31, 1984, request for additional information on September 2, 1986.

We have considered carefully the information you have provided, as well as comments and information from other sources. At the outset, we note that since November 1, 1968, the effective date of Section 5 coverage for Cochise County, the college district has implemented four different redistricting plans without obtaining the requisite Section 5 preclearance. In 1975, the Attorney General interposed an objection to the college district's redistricting plan first implemented in 1972, finding that the plan unnecessarily fragmented minority concentrations in the Douglas area. It appears that a new redistricting plan was adopted and used between 1975 and 1980, but the college district never sought preclearance for that plan. In 1982, the county submitted another redistricting plan, adopted pursuant to changes in state law which themselves had not been precleared, and, as we advised the county at that time, we were unable to make a determination on the 1982 plan unless and until the state law changes had been precleared. Those changes later were precleared and you have submitted for Section 5 review a 1983 redistricting plan which we understand was adopted to replace the 1982 plan.

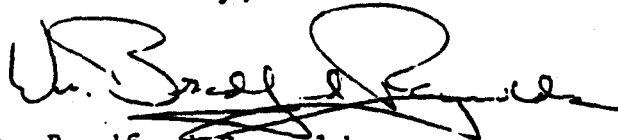
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). A prohibited "effect" is one that leads to a retrogression in the position of affected minorities with respect to their effective exercise of the electoral franchise. See Beer v. United States, 425 U.S. 130 (1975). In the instant case, the benchmark for measuring such retrogression is whether the submitted plan makes it more difficult for minority voters to participate effectively in the political process than did the plan in force or effect on November 1, 1968.

Although we repeatedly have requested that you provide current (1980) population data for the benchmark plan, we have yet to receive that information. Even so, we have been able to arrive at some estimates which show that, under that plan, the district with the heaviest Hispanic concentration (District 1) would be about 64 percent Hispanic in population and 54 percent Hispanic in voting age citizen population. In contrast, the strongest minority district in the submitted plan (District 2) is about 56 percent Hispanic in total population and only 46 percent Hispanic in voting age citizen population. This reduction in the Hispanic population appears to result from the fragmentation of the minority community in the Douglas-Pirtleville area, which is similar to the fragmentation that raised concerns and led to the objection that was interposed in 1975 to a previous redistricting plan. The county has offered no explanation for this fragmentation. In light of other readily discernible configurations that would maintain that community intact and the ethnic bloc voting patterns that appear to prevail in Cochise County, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the 1983 redistricting plan for the Cochise County Community College District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this 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, Section 51.44 of the guidelines permits you to 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 effect of the objection by the Attorney General is to make the redistricting plan legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Cochise County Community College District plans to take with respect to this matter. If you have any questions, feel free to call Steven H. Rosenbaum (202-724-3143), an Attorney in the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm. Bradford Reynolds", written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division