



Office of the Assistant Attorney General

Washington, D.C. 20035

February 26, 1993

Leroy W. Blankenship, Esq.  
Senior Deputy County Counsel  
Monterey County  
P. O. Box 1587  
Salinas, California 93902-1587

Dear Mr. Blankenship:

This refers to the redistricting plan for the board of supervisors, the appointment of a redistricting commission and a revised election schedule for the June 8, 1993, special election in Monterey County, California, 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 initial submission on December 28, 1992; supplemental information was received on January 22 and on February 10, 11 and 23, 1993.

We have expedited our review of this submission in light of the February 26, 1993 preclearance deadline identified by the United States District Court in Gonzalez v. Monterey County, No. C-91-20736, slip op. (N.D. Cal. Dec. 8, 1992). However, your initial submission, which provided little information about the redistricting process, stated that supplemental information including trial transcripts, documents provided to the redistricting commission, redistricting commission transcripts, documents provided to the board of supervisors, and minutes and agendas of the board of supervisor meetings at which the proposed plan was discussed, would be provided as soon as possible. We did not receive any of this supplemental information until January 22, 1993. In addition, your initial submission stated that the supplemental information would include trial briefs, final election results for the June and November, 1992 elections and registered voter information by race and ethnicity; we have not received this material. Nevertheless, we believe we have a sufficient basis to make a determination on the merits of the submitted voting changes.

The Attorney General does not interpose any objection to the proposed election calendar, for which we received the supplemental information to complete your submission on February 23, 1993. As authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. The Attorney General does not interpose any objection to the appointment of the redistricting commission, to the extent that it is a change affecting voting. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin enforcement of these changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

With regard to the proposed redistricting plan, we have carefully considered the information you have provided, as well as information provided by other interested persons. According to the 1990 Census, the total population of Monterey County is 355,660, among whom 33.6 percent are Hispanic, 7.1 percent are Asian-Pacific Islander and 6.1 percent are black; Hispanics comprise 17.3 percent of the voting age citizens in the county. No Hispanic has been elected supervisor in Monterey County in this century.

The proposed redistricting plan provides for two districts, District 1 and District 3, in which Hispanics comprise a majority of the total population, but in which white non-Hispanics comprise a plurality of the citizen voting age population. The proposed redistricting plan has a total population deviation in excess of 15 percent. Our analysis has considered the manner in which the county's minority population is distributed among supervisorial districts under the proposed plan, as well as under the county's 1981 redistricting plan, which has been enjoined by the court in Gonzalez v. Monterey County, *supra*, (N.D. Cal. Sept. 8, 1992), the April, 1992 redistricting plan that was precleared under Section 5 but did not become effective under state law and has been repealed, and the September, 1992 redistricting plan that was agreed to by the plaintiffs and the minority plaintiff-intervenors in the Gonzalez case but was rejected by the county.

Our examination of the county's demographics reveals a discrete concentration of Hispanic population in and near the City of Salinas that provides the basis for a supervisorial district in which Hispanics comprise at least a plurality of the citizen voting age population. The boundaries of the proposed redistricting plan, however, divide a heavily-Hispanic area in the southern portion of the City of Salinas from the remainder of proposed District 1, while a heavily-white non-Hispanic area of

roughly equivalent population in the northern portion of the city is included in proposed District 1. In addition, heavily Hispanic areas in the northwestern portion of the county are included in proposed District 2, rather than in proposed District 3. As a consequence, neither proposed District 1, nor any other district in the proposed plan, contains even an Hispanic plurality of the citizen voting age population.

We note that the court in Gonzalez, supra, slip op. at 20 (N.D. Cal. Dec. 8, 1992), has advised:

In balancing the advancement of minority voting strength against the preservation of legitimate community interests, the parties are reminded that while the maintenance of community interests is a permissible consideration, racial fairness is mandatory.

Your submission fails to disclose a sufficient justification for rejection of available alternative plans with total population deviations below ten percent that would have avoided unnecessary Hispanic population fragmentation while keeping intact the identified black and Asian communities of interest in Seaside and Marina. The proposed redistricting plan appears deliberately to sacrifice federal redistricting requirements, including a fair recognition of Hispanic voting strength, in order to advance the political interests of the non-minority residents of northern Monterey County.

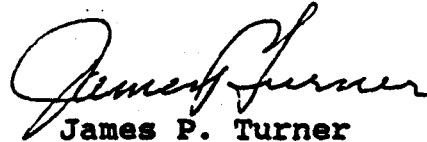
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the 28 C.F.R. 51.52. In light of the considerations discussed 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 Ordinance No. 3653, the redistricting plan for the Monterey County Board of Supervisors.

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 redistricting plan continues to be legally unenforceable. 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Monterey County Board of Supervisors plans to take concerning this matter. If you have any questions, you should call Robert A. Kengle (202-514-6196), an attorney in the Voting Section.

Since the Section 5 status of the proposed redistricting plan has been placed at issue in the Gonzalez case, we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,



James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division

cc: Honorable William A. Ingram  
United States District Judge

Counsel of Record