



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 30, 1992

Bob Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1991 redistricting plan for commissioners court districts, the renumbering of voting precincts, realignment of voting precincts, the elimination of a voting precinct and the polling place therefor, and two polling place changes for Castro County, Texas, 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 responses to our request for additional information on January 30 and March 5 and 13, 1992.

We have considered carefully the information you have provided, as well as comments from other interested persons. At the outset, we note that according to the 1990 Census, Hispanics constitute 46% of the county's population and are principally concentrated in the City of Dimmitt and the Town of Hart. We also note that a significant number of Hispanic residents in the county are noncitizens and not eligible to vote. We have identified two specific areas of migrant farmworker housing, Azteca Apartments and the Coronado Acres subdivision, where we understand there are concentrations of Hispanic persons who are not eligible to vote.

In the proposed redistricting of the commissioners court districts, the county has proposed a plan with two majority-minority districts. District 1 is 58% Hispanic and includes the entire town of Hart and the southeast quadrant of the county, but no part of Dimmitt. District 3 is 65% Hispanic, and includes part of Dimmitt and the two migrant housing developments noted above. While these two districts are majority Hispanic in population and voting age population (51% and 56% respectively), further information indicates that Hispanics who are eligible to vote would be in the minority in both districts. In light of the

apparent pattern of polarized voting in county elections, it would not appear that either of these districts will afford Hispanic voters the opportunity to elect their preferred candidates.

We understand that during the redistricting process several alternatives were presented and rejected and that, in the course of the redistricting debate, representatives for the minority community urged the county to create one or two districts with populations greater than 70% Hispanic so that Hispanic voters would have a realistic opportunity to elect their candidates of choice. While we recognize that it may not be possible to draw two districts which would afford minority voters such an opportunity, given the large noncitizen population in the county, the county has not provided any nonracial explanation for its failure to adopt a plan which includes at least one viable Hispanic district.

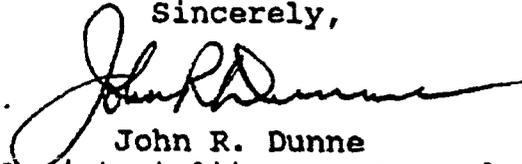
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In light 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 1991 redistricting plan for county commissioner districts.

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 have neither a discriminatory purpose nor a discriminatory effect. 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 of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

Because the voting precinct and polling place changes are dependent upon the objected-to redistricting, the Attorney General will make no determination with regard to them. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Castro County plans to take concerning this matter. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Dunne".

John R. Dunne
Assistant Attorney General
Civil Rights Division



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Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 6, 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to your May 1, 1992, requests that the Attorney General reconsider the objections interposed under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1991 redistricting plans for the commissioners courts in Castro, Cochran, Deaf Smith, Hale, and Terrell Counties, Texas and the redistricting plan for the commissioners court and for justices of the peace and constables in Bailey County, Texas. We received your requests on May 4, 1992.

As you are aware, the redistricting plans for these Texas counties were separately submitted for Section 5 review and were the subject of separate Section 5 determination letters. The instant reconsideration requests, however, are identical and accordingly we are responding to all the requests by this letter. The requests allege that the Attorney General applied an improper standard in interposing these Section 5 objections and indicate that supporting information will be provided after the Department responds to the Freedom of Information Act requests that have been filed with regard to the Department records associated with the objections. In this regard, we note that we currently are processing the FOIA requests and should respond to all the requests shortly. The reconsideration requests otherwise do not offer any specific reasons why the objection analyses may have been flawed or present any data or other information to support withdrawal of the objections.

Section 51.48 of the Procedures for the Administration of Section 5 specifies that "[t]he objection shall be withdrawn if the Attorney General is satisfied that the change does not have the purpose or effect of discriminating on account of race, color, or membership in a language minority group." See also Georgia v. United States, 411 U.S. 526 (1972); 28 C.F.R. 51.52. The instant requests do not establish any basis for concluding that the counties have met their burden in this regard, and our review of the objections indicates that we applied the statutory standards contained in Section 5 in interposing the objections. Accordingly, on behalf of the Attorney General, I decline to withdraw the objections to the commissioners court redistricting plans for Castro, Cochran, Deaf Smith, Hale, and Terrell Counties, Texas, and the objection to the redistricting plan for the commissioners court and for justices of the peace and constables for Bailey County, Texas.

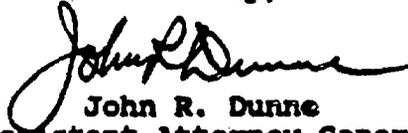
As previously noted in the objection letters, Section 5 provides that the counties may seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the counties may at any time renew their requests that the Attorney General reconsider the objections. 28 C.F.R. 51.45.

We wish to emphasize, however, that unless and until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plans to which objections have been interposed are legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45. We note that each of the counties requesting reconsideration implemented its unprecleared 1991 plan in the 1992 primary election, contrary to the express requirement of Section 5 that no voting change may be implemented without first obtaining Section 5 preclearance either from the Attorney General or the District Court for the District of Columbia.

Accordingly, to enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that Bailey, Castro, Cochran, Deaf Smith, Hale, and Terrell Counties plan to take to place themselves in compliance

with the Act... If you have any questions, you should call
Mark A. Posner, Section 5 Special Counsel in the Voting Section,
at (202) 307-1388.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division