



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

May 16, 1994

D. Rand Henderson, Esq.
Deputy County Attorney
P. O. Box 668
Holbrook, Arizona 86025

Dear Mr. Henderson:

This refers to establishment of two additional superior court judgeships in Navajo 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 responses to our request for additional information on March 15, 17, and 21, 1994.

We have considered carefully the information you have provided, as well as information from other interested persons. 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 Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, the Section 5 Procedures (28 C.F.R. 51.55(b)(2)) require that preclearance be withheld where a change presents a clear violation of the results standard incorporated in Section 2 of the Voting Rights Act, 42 U.S.C. 1973. Where the submitted changes involve additional elective positions, those changes must be reviewed in light of the method by which the positions will be elected.

Native Americans constitute 51 percent of Navajo County's total population and 47 percent of its voting age population according to the 1990 Census. The county includes portions of three reservations, the Navajo, Hopi, and White Mountain Apache Reservations; Navajos are the largest tribal group in the county, constituting about two-thirds of the county's Native American population.

Superior court judges are elected at large within Navajo County by designated position. Candidates run in a partisan primary and then compete (along with any independent candidates) in a nonpartisan general election.

Our analysis indicates that the at-large system does not allow Native American voters an equal opportunity to participate in superior court elections and elect candidates of their choice. In this regard, it appears that county elections are characterized by a pattern of racially polarized voting, whose impact is exacerbated by the use of designated positions (which preclude voters from utilizing the election device of single-shot voting) and the unusually large size of the county (which makes it more difficult and expensive to campaign). In addition, it appears that the ability of Native American voters to participate effectively in the political process continues to be impaired by the long history of discrimination in voting and other areas of public life.

As a result, no Native American candidate has been elected to any office in the county that utilizes an at-large election system. In contrast, Native American voters consistently have been able to elect candidates of their choice from constituencies that are majority Native American, most notably to the county board of supervisors which has five members elected from single-member districts. While no Native American candidate has run for the superior court, potential candidates may have been deterred by the at-large election system. See Westwego Citizens for Better Government v. Westwego, 872 F.2d 1201, 1208-1209 & n.9 (5th Cir. 1989) (decisionmaker should consider the possibility that minority candidates "'don't run because they can't win'" in evaluating dilution evidence).

Our analysis further indicates that alternatives are available for electing superior court judges that would afford minority voters an equal electoral opportunity. For example, it appears that under a fairly drawn plan of single-member electoral subdistricts, Native Americans would constitute a substantial majority in at least one district.

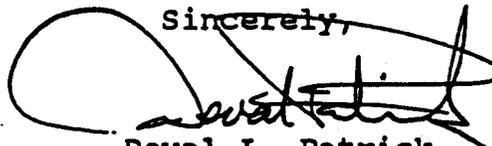
We recognize the county's interest in adding judgeships to address the size of the local court docket. We also have analyzed the state interest asserted in the at-large method of election. However, we believe that both interests properly may be served while fashioning an election system that would fairly recognize minority voting strength.

In light of these considerations, I cannot conclude, as I must, under the Voting Rights Act, that the county has made the necessary showing under Section 5. Therefore, while we do not in any way question the county's need for establishing additional superior court judgeships, I must, on behalf of the Attorney General, interpose an objection to the additional superior court judgeships in the context of the existing at-large election system.

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 additional judgeships 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, 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 objected-to changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 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 Navajo County plans to take concerning this matter. If you have any questions, you should call Special Section 5 Counsel Mark Posner, at (202) 307-1388.

Sincerely,



Deval L. Patrick
Assistant Attorney General
Civil Rights Division