



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

MAR 02 1995

Ms. Sally Tamez-Salas  
Assistant Secretary  
Board of Directors  
P.O. Box 15830  
San Antonio, Texas 78212-9030

Dear Ms. Tamez-Salas:

This refers to the temporary use of punch card ballots and the procedures relating thereto, and the joint agreement between the Edwards Underground Water District and Bexar County for the conduct of the November 8, 1994, election of the board of directors of the Edwards Underground Water District in Bexar, Hays and Comal Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. On February 15, 1995, we received your response to our November 22, 1994, letter in which we precleared the November 8, 1994, election procedures for Hays and Comal Counties and requested additional information on the November 8, 1994, election procedures for Bexar County.

We have carefully considered the information you have provided, as well as information and comments from other interested persons. According to the 1990 Census, the Edwards Underground Water District has a total population of 1,261,098 persons, of whom 48.7 percent are Hispanic. The Hispanic share of the voting age population of the water district is 44.5 percent. Almost 94 percent of the population in the water district is located in Bexar County. Hispanic persons represent 49.7 percent of the total and 45.6 percent of the voting age population in Bexar County. Black persons represent 6.9 percent of the total and 6.8 percent of the voting age population in Bexar County.

Single-member districts recently were adopted by consent decree to settle a federal court challenge to the existing water district election system on one-person, one-vote grounds under the Fourteenth Amendment and minority vote dilution grounds under Section 2. Williams v. Edwards Underground Water District, C.A. No. SA92- CA0144, (W.D. Texas). Under the settlement plan, the water district will be governed by a twelve-member board of directors elected from single-member districts. Six of the members will be elected from Bexar County, four of whom will be elected from districts that are majority minority in voting age population. The parties also agreed to change the date of the

water district's elections from the third Saturday in January of odd-numbered years to the second Tuesday in November of even-numbered years. Finally, the parties agreed to an implementation schedule that, in part, required 1994 elections in two of Bexar County's majority minority districts (Districts 3 and 5).

About two months after the Williams suit was settled, the Edwards board entered into negotiations to have Bexar County conduct the November elections in Edwards Districts 3 and 5. Our investigation has revealed that during these negotiations, representatives of the Edwards board impressed upon the county the need to have the Edwards election on the same ballot as the general election in order to comply with the consent decree's intent to increase voter turnout. Despite the availability of a variety of alternative approaches for placing the Edwards election on the general election ballot, the county chose to hold the Edwards election on a separate ballot and the Edwards board contracted for the county to do so.

To allay concerns about the adverse impact the dual ballots would have on voter turnout in the Edwards election, the county represented that it would implement an extensive training program to ensure that poll officials were prepared to handle both elections and that it would provide publicity, signs, and assistance to ensure that voters would be aware of the Edwards election. However, our investigation reveals that the county does not appear to have taken even the most basic steps to prevent confusion among the poll officials and ensure voter participation in the Edwards election. For example, we have received numerous reports that the county provided little publicity regarding the Edwards election prior to the election, provided virtually no signs or assistance in the polling places to direct voters to the Edwards election, and apparently provided information at training sessions concerning the procedures for the Edwards election that led some poll officials to understand that they were to offer voters Edwards ballots only if voters specifically asked for these ballots.

Neither the Edwards board, nor the county, has shown that the decision to place the Edwards election on the general election ballot and/or the county's apparent failure to fully and clearly implement an extensive training program for poll officials and provide publicity, signs, and assistance for voters did not contribute to the significant difference between the voter participation levels in the Edwards and general elections and the apparent inability of voters to participate in the political process in two districts (Districts 3 and 5) that were created specifically to provide minority voters with an equal opportunity to elect candidates of choice.

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. The existence of some legitimate, nondiscriminatory reasons for the voting change does not satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). Our review leads us to conclude that holding a timely general election did not necessarily require severing the Edwards election from the general ballot, and that once the decision to do so was made, that the failure to fully and clearly train poll officials and educate and assist voters further exacerbated the adverse impact of holding the Edwards election on a separate ballot. Nor can we say that the Edwards board or the county has met their burden of showing that, in these circumstances, temporary use of punch card ballots and the procedures relating thereto will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

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 temporary use of punch card ballots and the procedures relating thereto.

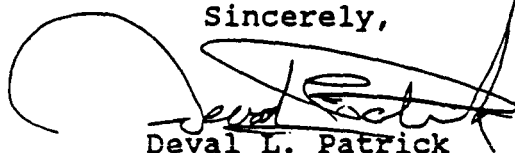
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider

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 temporary use of punch card ballots and the procedures relating thereto continue to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

The joint agreement between the Edwards Underground Water District and Bexar County for the conduct of the November 8, 1994, election is directly related to the temporary use of punch card ballots and the procedures related thereto. Accordingly, the Attorney General will make no final determination at this time with regard to this related change. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that the Edwards board plans to take concerning this matter. If you have any questions, you should call Colleen M. Kane, an attorney in the Voting Section (202-514-6336).

Sincerely,

A handwritten signature in black ink, appearing to read "Deval L. Patrick", is written over a horizontal line. The signature is stylized with a large loop on the left and a sharp upward stroke on the right.

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division