

OCT 9 1973

DJ 166-012-3

John M. McGowan, II, Esquire
Special Assistant Attorney General
Office of the Attorney General
Department of Law
State Capitol
Phoenix, Arizona 85007

Dear Mr. McGowan:

This is in reference to your submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, of Chapters 159 (House Bill 2020) and 183 (House Bill 2055) of the Arizona Laws of 1973 and the voting changes contained therein. Your submission was received on August 10, 1973.

The Attorney General does not interpose any objections to the changes in question except as noted below in reference to Chapter 159, Section 14, New Section A.R.S. §19-205.02. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, I request that you advise appropriate officials in Arizona counties covered by the Voting Rights Act of 1965 electing to avail themselves of the enabling provisions contained in Chapters 159 and 183 which permit the consolidation of polling places for purposes of

voting in recall elections (Section 19-214) and for the determination of qualifications of prospective deputy registrars by county recorders (Section 16-141), that it is the individual responsibility of each county to submit its adoption of such provisions for review by this Department pursuant to Section 5 of the Voting Rights Act of 1965, as amended.

As you know the deadline for decision under Section 5 of the Voting Rights Act is 60 days after receipt of all necessary information, and that deadline would have normally ended today. However, we have today received correspondence in reference to the changes proposed by Chapter 159, Section 205.02, alleging that recently:

. . . the issue of deputy registrars was again used discriminatorily in rejecting as invalid over 26,000 signatures on recall petitions which had been circulated by persons who were deputy registrars -- based on an attorney general's ruling which cited no authority and which was made for the first time months after the petitions had been circulated. These 26,000 signatures, the bulk of which were those of chicano voters, were enough to defeat the attempt to seek a recall election.

In addition it is contended that:

[N]oaths after recall petitions had been circulated, many of them by people who were deputy registrars (in accordance with

the prevailing custom of allowing deputy registrars to circulate nominating petitions for candidates in ordinary elections), the Attorney General ruled, in late September, that signatures on petitions circulated by deputy registrars would be considered void without even checking any of the signatures (unless the particular signatory gave an individual statement -- which I think had to be verified -- that he had not been coerced into signing the petition). This was nothing less than the enforcement of the new provision, ex post facto, and without clearance under section 5.

Due to the shortness of time remaining, we have been unable to fully evaluate these contentions but do conclude, that if the allegations are correct, serious questions as to the appropriateness of the proposed legislation under Section 5 of the Voting Rights Act of 1965, as amended, would be raised.

The Attorney General's regulations provide that if the Attorney General is unable to resolve conflicting facts within the 60 day period he shall object. See 28 C.F.R. 51.17. Accordingly, I must on behalf of the Attorney General interpose an objection to Section 205.02 of Chapter 159. Because of unusual circumstances here we are undertaking an expedited consideration of the issues raised in connection with this submission and will re-examine the matter as soon as possible. If at that time we determine that the objection interposed here should be withdrawn, we will so advise you.

In order to assist us in resolving the conflict now before the Attorney General, would you please provide us with the following information:

1. Copies of any opinions of the Attorney General respecting the validity, or invalidity, of recall petitions filed in the last 24 months.
2. Copies of any other documents or correspondence which reflect upon the issues raised in the correspondence which we have received in this matter and which is referred to above.
3. Any other information relative to this matter which would assist the Attorney General to resolve this apparent conflict.

If you have any questions concerning this letter, please contact my office or Gerald W. Jones (202-759-2167) of my staff.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

JAN 17 1974

John H. McGowan, II, Esquire
Special Assistant Attorney General
Office of the Attorney General
Department of Law
State Capitol
Phoenix, Arizona 85007

Dear Mr. McGowan:

This is in reference to your letter of October 16, 1973 concerning my letter of October 9, 1973 in which I incorporated on behalf of the Attorney General, an objection pursuant to Section 5 of the Voting Rights Act of 1965, as amended, to Chapter 159, Section 14, New Section A.R.S. § 19-205.02, Arizona Laws of 1973.

We have given careful consideration to the statements in your letter, the opinion of the Attorney General dated July 27, 1973 which you provided, as well as other information provided this Department, including a copy of the Complaint filed in the United States District Court for the District of Arizona November 12, 1973 by Manuel Pena, Jr., et al. against Gary Nelson, et al..

It is our understanding that your position is that the invalidation of recall petition signatures obtained by registration officials did not occur as a result of the application of Chapter 159, Section 14, New Section A.R.S. § 19-205.02 but rather as a result

of the State Attorney General's interpretation of the state constitution (pages 4 and 7, Department of Law Opinion No. 73-15 (A 33)).

While we accept your assurance that such was the case, we feel a responsibility to point out that in our judgment Section 5 of the Voting Rights Act of 1965, as amended, provides that such interpretations which have the effect of altering existing voting qualifications or prerequisites to voting, or standards, practices or procedures with respect to voting are subject to the provisions of Section 5. In this regard we note that the Attorney General's opinion referred to above appears to be the first instance in Arizona in which it has been determined that signatures on recall petitions circulated by registration officials are not to be counted. Accordingly, we believe that consistent with Section 5 of the Voting Rights Act of 1965 the Attorney General's opinion for you in Department of Law Opinion No. 73-15 (A 33) dated July 17, 1973, cannot be lawfully enforced until a declaration is obtained from the United States District Court for the District of Columbia or a subdivision is made to the Attorney General and 60 days pass without the imposition of an objection. In this regard it is my further judgment that it would be inappropriate at this time for the Attorney General to withdraw the objection previously interposed to Chapter 157, Section 14, New Section A.R.S. § 19-201.02, Arizona Laws of 1973 because that legislation and its prospective effect on Arizona election procedures is clearly related to the facts and background which are embraced in and which will be a part of our determination in respect to the heretofore unsubmitted opinion of the State Attorney General.

In the event that you desire to submit the Attorney General's opinion to this Department I am enclosing a copy of the Procedures for the Administration of Section 5 of the Voting Rights Act of 1965 for your information and assistance. Should you submit the Attorney General's opinions to this Department it would be helpful if you could provide the information, if appropriate, set out in § 51.10 of those procedures. Especially helpful would be information which indicates the number of persons, by race or color, affected by the Attorney General's determinations in respect to the counting of signatures on recall petitions.

If we can be of any assistance or if you should like to discuss this matter, please feel free to call upon any or members of my staff.

Sincerely,

J. STANLEY PORTINGER
Assistant Attorney General
Civil Rights Division

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RET. 2/11/74
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DJ 166-012-3

Honorable Gary K. Nelson
Attorney General
State Capitol
Phoenix, Arizona 85007

Dear Mr. Attorney General:

This is in reference to your correspondence dated January 14, 1974 concerning my letter of January 7, 1974 in which I suggested the submission pursuant to Section 5 of the Voting Rights Act of 1965, as amended, of Department of Law Opinion No. 73-15(R-55). Reference is also made to the October 16, 1973 letter from Special Assistant Attorney General John McGowan, II, concerning my letter of October 9, 1973 in which I interposed on behalf of the Attorney General, an objection pursuant to Section 5 of the Voting Rights Act of 1965, as amended, to Chapter 159, Section 14, New Section A.R.S. §19-205.02, Arizona Laws of 1973.

We have given careful consideration to the information set out in the referenced letters, the opinion of the Attorney General dated July 27, 1973 which was provided, as well as other information provided this Department, including copies of the pleadings filed in the United States District Court for the District of Arizona November 12, 1973 by Manuel Pena, Jr., et. al., against Gary Nelson, et. al.. Based upon all available information it appears clear and undisputed that little purpose would be served by renewal now of efforts begun in early 1972 to seek a gubernatorial recall election. On the other hand it is clear and undisputed

that such efforts now might well cause interference with the regularly scheduled 1974 elections. Our judgment in this respect is based in part upon our understanding that Arizona recall election statutes require considerable pre-election efforts by state and local election officials, notice to the public, designation of an alternate candidate and a campaign period for the challenged officeholder and his/her opponent. It is our further understanding that few, if any, of the pre-election requirements have been met at this time and that even assuming, arguendo, that a recall election would be called that it could not as a practical matter be accomplished before the regularly scheduled 1974 Arizona primary and general election activities are due to commence.

Accordingly, while we do not share the judgment expressed in your letter of January 14, 1974 that the change occasioned by Department of Law Opinion No. 73-15 (R-55) is not subject to the provisions of Section 5 of the Voting Rights Act of 1965, as amended, it well may be that that matter may be affected by the court's decision in Pena, et al. v. Nelson, et al., Civil Action No. 73-709 PEX-CAM (D. Ariz.). Since there is now no compelling reason for prompt determination of that question, we will await the outcome of that case.

As to Chapter 159, Section 14, New Section A.R.S. §19-205.02, Arizona Laws of 1973, pursuant to the assurances given in my letter of October 9, 1973 we have reexamined the matter in light of the information subsequently received. Our review shows that the only suggestion of discrimination in the procedures used with respect to the acceptance of the petitions in question related to the application of those procedures to this recall effort. There are no

indications and no assertions that disallowing the circulation of recall petitions by persons engaged in the registration process (as provided in Section 14) will discriminate against minorities. Accordingly, we have determined that the objection previously interposed should be withdrawn and the Attorney General does not interpose any objection to the future implementation and enforcement of Chapter 159, Section 14, New Section A.R.S. §19.205.02, Arizona Laws of 1973. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act of 1965 expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

In view of their obvious interest in this matter I am providing a copy of this letter to counsel for plaintiffs in the Pena case.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division