U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 8, 1982

Honorable Robert Corbin
Attorney General
State of Arizona
Department of Law Building
1275 West Washington
Phoenix, Arizona 85005

Dear Mr. Attorney General:

This is in reference to House Bill 2001 and House Bill 2002 of the Seventh Special Session of the Arizona Legislature of 1981, which provide for the reapportionment of the Arizona Legislature and United States Congressional districts, respectively, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c. Your submission was received on January 6, 1982.

We have given careful consideration to the information you have provided, as well as the information and comments received from other interested parties. With respect to House Bill 2002, which provides for the reapportionment of United States Congressional districts, the Attorney General does not interpose any objection to the change in question. We feel a responsibility though 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 change.

We are, however, unable to preclear House Bill 2001, which provides for the reapportionment of the Arizona Legislature. Under Section 5, the State bears the burden of proving the absence of both discriminatory purpose and effect in a newly devised legislative reapportionment plan. City of Rome v. United States, 446 U.S. 156, 183 n. 18 (1980); Beer v. United States, 425 U.S. 130, 140-41 (1976). Even though our analysis shows that, for the most part, the state has satisfied this burden with respect to the submitted legislative reapportionment plan, the manner in which the San Carlos Indian Reservation has been fragmented into different legislative districts raises concerns which will not allow us to conclude that the legislative plan does not have a discriminatory purpose or effect.

Our analysis shows that the San Carlos Indian Reservation presently is located in one legislative district (except for two unpopulated or virtually unpopulated areas) but under the proposed redistricting plan the Reservation population would be substantially fragmented into two districts (with an unpopulated or practically unpopulated Reservation area in a third district). In this regard, we note that one of the redistricting criteria enunciated in your submission was that; "The maintenance of individual Indian reservations within a single legislative district was attempted wherever possible and particularly where significant American Indian populations would be impacted" (Exhibit D, at p. 4). We also are aware that an alternative proposal was presented which would have avoided such fragmentation of the Tribe and we have received complaints alleging that this alternative proposal was rejected for racially discriminatory reasons. In addition, our own review has revealed that a reasonable alternative plan could be drawn which would avoid the fragmentation in question. On the other hand, the State has offered no satisfactory explanation for, or governmental interest in, the division of the San Carlos Indian Reservation. In these circumstances, therefore, we are unable to conclude that the State has met its burden of proving that the plan, as it affects the referenced area, meets the requirements of the Act. Accordingly, I must, on behalf of the Attorney General, interpose an objection to House Bill 2001 pursuant to Section 5 of the Voting Rights Act of 1965.

Of course, as provided by Section 5 of the Voting Rights Act, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the legislative reapportionment plan does not have the purpose and will not 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 Procedures for the Administration of Section 5 (Sec. 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or unless a declaratory judgment from the District Court for the District of Columbia is obtained, the effect of the Attorney General's objection is to render the reapportionment of the Arizona Legislature legally unenforceable.

If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit in our Voting Section. You can be assured that we are prepared to assist you in any way possible in connection with your reapportionment efforts.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division