



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

September 28, 1992

John K. White, Esq.
Chief Civil Deputy
Yuma County Attorney's Office
168 South Second Avenue
Yuma County Courthouse
Yuma, Arizona 85364

Dear Mr. White:

This refers to the 1992 redistricting plan for the board of supervisors, the associated precinct and polling place changes, and the establishment of a fourth superior court judgeship for the superior court in Yuma County, Arizona; and the 1992 redistricting plan for the Yuma County portion of the Arizona Western College District in Yuma and La Paz Counties, 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 response to our request for additional information on July 28, 1992.

This also refers to Yuma County's prior Section 5 submission of the apportionment scheme for single-member districts for the Arizona Western College District (three districts drawn wholly within Yuma County and two districts drawn wholly within La Paz County) and the existing redistricting plan for the Yuma County portion of the College District. On June 25, 1990, the Attorney General made a timely request to the county for additional information with respect to those changes, but no response to that request was ever received.

We have carefully considered the information you have provided, as well as information provided by other interested persons. According to the 1990 Census, Yuma County has a total population of 106,895, of whom 41 percent are Hispanic. Blacks, Native Americans, and Asians also together comprise approximately five percent of the county population. The Hispanic population is concentrated in the City of Yuma, located near the northwestern corner of the county, and in rural areas and small

towns on the county's western border. Our review of past county elections indicates the existence of an apparent pattern of polarized voting with respect to the electoral preferences of Hispanic and Anglo voters.

The county board of supervisors is composed of five members elected from single-member districts. According to the information you have provided, no Hispanic has been elected to that board despite numerous candidacies since 1980 (a black candidate was elected in 1980 and 1984, and then was defeated in 1988). The proposed redistricting plan contains two districts in which Hispanics constitute a majority of the population: District 4, which embraces the Hispanic concentrations in the western rural area, is 74.5 percent Hispanic (a three percentage point increase from the pre-existing plan); District 1, which includes a portion of the Hispanic concentrations in the City of Yuma, is 51.4 percent Hispanic (a 1.4 percentage point decrease from the pre-existing plan). In the 1992 primary -- in which the proposed plan was implemented despite the absence of Section 5 preclearance -- a Hispanic was nominated in District 4 while Hispanic and black candidates were defeated in District 1. The proposed plan fragments the Hispanic concentrations in the City of Yuma between Districts 1 and 3.

During the redistricting process, minority leaders asked that the county adopt a supervisor redistricting plan that fairly reflects minority voting strength in the county, presented an alternative plan for the county's consideration, and offered to work with the board of supervisors in developing an appropriate plan. Their presentation sought to assure that the new plan would not fragment the Hispanic concentrations in the City of Yuma. The board, however, declined to consider any remodeling of the alternatives it had developed (each of which included the Yuma city fragmentation), and focussed on the presence of some jagged district lines in the alternative plan presented by minority leaders.

Our review indicates that the county could have accommodated its interest in drawing compact districts while also addressing the fragmentation of Hispanics in Yuma city. In this regard, it appears that the county's desire to protect the incumbent white supervisors prevailed over the interest of minority voters in having a greater opportunity to elect their preferred candidates. While incumbency protection may in the appropriate circumstances be a proper redistricting goal, we cannot preclear a plan where, as here, such protection is obtained at the expense of recognizing the community of interest shared by insular minorities. See, e.g., Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).

With respect to the changes submitted for the Arizona Western College District, the Attorney General does not interpose any objection to the district apportionment scheme. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the college district redistricting plans, however, we cannot reach the same conclusion. The college district itself is comprised of Yuma and La Paz Counties, and the district board is composed of five members elected from single-member districts. Pursuant to the apportionment scheme now in place, three of those districts are drawn wholly in Yuma County, with two districts drawn wholly in La Paz County. Both the 1992 and the existing plans for the Yuma portion of the college district divide the Hispanic concentrations in the county among all three districts. In the 1992 plan, for example, District 4, which encompasses the rural Hispanic concentrations on the western side of the county and reaches up to the City of Yuma, stops just short of the Yuma city Hispanic concentrations, with those concentrations being divided between Districts 3 and 5. As a result, none of the three districts has an effective Hispanic population majority.

The 1992 college district plan was adopted by the board of supervisors at the same time it was considering the redistricting of its own districts. Although the board had received substantial input from minorities with respect to the districting of the Yuma city concentrations in the supervisor plan, the board allowed only a minimal opportunity for minority input regarding the college district plan and, in this context, adopted a plan that minimizes Hispanic voting strength because of the configuration selected for the Yuma city area.

The existing plan, first adopted and submitted in 1990, is also appropriately before the Attorney General for review and decision under Section 5. That plan has never received the required Section 5 preclearance, notwithstanding our request for additional information in 1990. However, our analysis of the 1990 plan on the basis of information now available to us indicates that it also unnecessarily fragments the minority community in and around Yuma and, therefore, suffers from the same deficiencies as the 1992 plan.

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 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 the

county's burden has been sustained in this instance with regard to any of the districting plans now before us for review. Therefore, on behalf of the Attorney General, I must object to the 1992 redistricting plans for the board of supervisors and both the existing and 1992 plans for the Arizona Western College District.

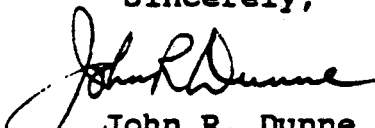
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the redistricting plans have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership 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 1992 redistricting plan for the board of supervisors and the 1992 and existing redistricting plans for the Arizona Western College District continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

With respect to the precinct and polling place changes, the Attorney General is unable to make a Section 5 determination at this time because they are directly related to the objected-to redistricting plan for the board of supervisors. 28 C.F.R. 51.22.

With respect to the establishment of a fourth superior court position, the Attorney General also is unable to make a Section 5 determination at this time because, subsequent to our request for additional information in this matter, we learned that the county's third superior court position was established in 1974 but has not received the requisite Section 5 preclearance. Since these two changes are directly related, they must be reviewed simultaneously. Id.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Yuma County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), Special Section 5 Counsel in the Voting Section.

Sincerely,


John R. Dunne
Assistant Attorney General
Civil Rights Division