



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

February 22, 1993

Ms. Barbara Felix  
Clerk, Graham County Board of Supervisors  
800 Main Street  
Safford, Arizona 85546

Dear Ms. Felix:

This refers to the 1992 redistricting plan for the board of supervisors, the April 1991, November 1991, and March 1992 realignments of voting precincts, and the creation of a new voting precinct and a polling place therefor, in Graham 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 further response to our request for additional information on December 23, 1992.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested parties. According to 1990 Census data, Hispanic persons represent 25.2 percent and Native Americans represent 14.5 percent of the county's population. The board of supervisors is elected from three single-member districts. The Hispanic share of the population is highest in District 3 in both the existing and proposed plans. The proposed plan, however, reduces the Hispanic share of the population in District 3 by about six percentage points from 38.7 percent to 32.6 percent. Our analysis of the proposed plan indicates that the reduction in the Hispanic percentage in District 3, in the context of the county's electoral history and apparent pattern of racially polarized voting, is likely to adversely affect the ability of Hispanic voters to elect candidates of their choice to the board.

We have considered your explanation that the reduction in the Hispanic percentage in proposed District 3 was the inevitable result of efforts to address underpopulation in existing District 3 and overpopulation in existing District 1, by, among other things, moving out of District 1 and into District 3 a fairly

large, majority Anglo precinct. Based upon our analysis, however, the reduction in the Hispanic share of District 3 appears attributable to the fragmentation of Hispanic population concentrations between proposed Districts 1 (23 percent Hispanic) and 3, which is particularly severe in the Safford area. Indeed, absent this fragmentation of Hispanic communities, it may well be possible to draw a district with an Hispanic percentage of as much as 45 percent, while adhering to other legitimate, race-neutral redistricting criteria.

We also have noted the county's reliance upon whole precincts in the redistricting process. But these precincts unnecessarily fragment Hispanic population concentrations and, when used as redistricting building blocks, appear to perpetuate fragmentation among supervisorial districts. Moreover, although the county's practice was to use whole precincts to redistrict, we note that the county was willing in 1992 to realign precinct boundaries during the redistricting process in ways that appear to further the interests of incumbents, but not in ways that would avoid minority vote dilution by remedying obvious fragmentation of minority population concentrations.

While the use of whole precincts for redistricting purposes may, under certain circumstances, be a proper redistricting criterion, we cannot preclear a plan where the goal of maintaining whole voting precincts is achieved at the expense of fairly recognizing minority voting strength. Similarly, while we recognize that the desire to protect incumbents may not in and of itself be an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See 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).

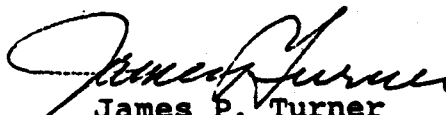
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1992 redistricting plan for the Graham County Board of Supervisors.

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 changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. 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 redistricting plan is and will continue to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the realignments of voting precincts, the creation of a voting precinct and polling place are changes that are directly related to the objected-to redistricting plan for the board of supervisors, the Attorney General will make no determination at this time regarding those changes. See 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 Graham County plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,



James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division