



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

April 8, 1994

Terence C. Hance, Esq.
Coconino County Attorney
100 E. Birch Avenue
Flagstaff, Arizona 86001

Dear Mr. Hance:

This refers to establishment of two additional superior court judgeships in Coconino 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 response to our request for additional information on February 7, 1994.

We have considered carefully the information you have provided, as well as information from other interested persons. 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 Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, the Section 5 Procedures (28 C.F.R. 51.55(b)(2)) require that preclearance be withheld where a change presents a clear violation of the results standard incorporated in Section 2 of the Voting Rights Act, 42 U.S.C. 1973. Where the submitted changes involve additional elective positions, those changes must be reviewed in light of the method by which the positions will be elected.

According to the 1990 Census, Coconino County has a total population of 96,591, of whom 29 percent are Native American. The county also includes smaller Hispanic and black populations, constituting 10 percent and 1 percent of the county's population, respectively. Superior court judges are elected at large by designated position. Candidates run in a partisan primary and then compete (along with any independent candidates) in a nonpartisan general election.

Our analysis indicates that elections in Coconino County are characterized by racially polarized voting. It appears that no Native American candidate has been elected to any office that utilizes an at-large election system. In contrast, Native

American voters consistently have been able to elect candidates of their choice from constituencies that are majority Native American, most notably to the county board of supervisors which has five members elected from single-member districts. In addition, the effect of polarized voting in the context of at-large superior court elections is exacerbated by the use of designated positions (which preclude voters from utilizing the election device of single-shot voting) and the unusually large size of the county (which makes it more difficult and expensive to campaign). In these circumstances, candidates that would be the choice of Native American voters may have been deterred from running by the at-large election system.

There are available alternatives for electing superior court judges that would afford minority voters an equal opportunity to participate in the electoral process and to elect judicial candidates of their choice. For example, it appears that under a fairly drawn plan of single-member electoral subdistricts, Native Americans would constitute a substantial majority in one district.

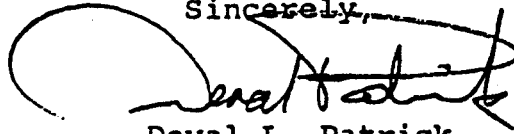
We recognize that the county has asserted that it has an interest in adding third and fourth judgeships in order to relieve an overcrowded court docket. In addition, we have analyzed the interest asserted in the at-large method of election. However, we believe that both interests properly may be served while fashioning an election system that would fairly recognize minority voting strength.

In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that the county has made the necessary showing under Section 5. Therefore, while we do not in any way question the county's need for establishing additional superior court judgeships, I must, on behalf of the Attorney General, interpose an objection to the third and fourth superior court judgeships in the context of the existing at-large election system.

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 additional judgeships 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 objected-to changes continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Deval L. Patrick", written over a horizontal line.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division