



United States Department of Justice

WASHINGTON, D.C. 20530

ASSISTANT ATTORNEY GENERAL

MAR 4 1977

Mr. Kenneth D. Webb
Registrar of Voters
Monterey County
P. O. Box 1848
Salinas, California 93901

Dear Mr. Webb:

This is in reference to the conversion to post-card registration forms and the bilingual election procedures for Monterey County submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on January 3, 1977, the date on which your most recent letter providing additional information was received.

The Attorney General does not interpose an objection to the conversion to postcard registration forms. 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 the submitted change.

With respect to the bilingual election procedures, we have made a thorough examination of all the information you have provided, demographic information concerning Monterey County, the views and comments of other interested parties, and the requirements of Section 203(c) of the Voting Rights Act of 1965, as amended. Our analysis has revealed several matters of concern.

Monterey County's plan for bilingual election procedures provides for three levels of bilingualism, depending on the percentage of voters requesting election materials in the Spanish language. Each voter in the county has been or will be asked but not required to fill out a postcard registration form. This form requests the voter to indicate whether he wishes to receive election materials in English or Spanish. If five percent or fewer of the county's registered voters request Spanish language materials, a "captioning" plan will be used; if six to twenty request Spanish language materials a "targeting" plan will be used; if more than twenty percent request Spanish language materials "blanket distribution" will be made. The statistics you provided indicate that 76,179 of the county's 100,790 registered voters, or seventy-six percent, have been converted to the postcard registration system. You conclude from a sampling you have conducted that 1.3 percent of the county's registered voters ultimately will request Spanish language materials. */

With regard to oral Spanish language assistance at the polls, all three plans state that "whenever the percentage of registered voters within a precinct requesting bilingual materials is equal to or more than 3% of the total registration of that precinct every reasonable effort shall be made to have at least one bilingual election official appointed to that precinct board." Even though in our letter of December 20, 1976, we requested an explanation for the use of this criterion, no such explanation has

*/While our analysis has considered all three of the proposals you submit, we have focused mainly on the "captioning" and "targeting" plans since our review shows that the "blanket distribution" plan is not a realistic alternative in Monterey County. That plan requires a plus 20% request for Spanish language materials when the voting age population of Spanish Americans in the county is only about 18%.

been furnished. Thus, we are left in a position of being unable to determine the potential effectiveness of this approach since it well may be that most persons requesting Spanish language materials are able to read Spanish and therefore do not need oral assistance at the polls. On the other hand the Spanish heritage voter who can read neither English nor Spanish and who needs Spanish language oral assistance may be unable or reluctant to request Spanish language materials. It would seem to us that the experience gained in the November 2, 1976, general election would be more relevant for determining at which polling places Spanish language oral assistance is needed. In this connection, we note that during that election 58 of the county's 246 voting precincts were designated for such oral assistance apparently with the concurrence of a minority interest group, the California Rural Legal Assistance organization (see Section 55.16 of our guidelines).

In addition, all three plans would appear to provide for official ballots in English only. The descriptions of the "captioning" and "targeting" plans state: "Copies of the (Spanish language) ballot facsimile shall be provided to each polling place and will be made available upon request to the voters. The facsimile can be used to assist the voter in marking his English only official ballot." (Emphasis added). The "blanket distribution" plan does not contain this specific language but does except the official ballot from those polling place materials which will be made bilingual.

Section 203(c) of the Act, which applies to Monterey County, specifically includes ballots among the materials subject to its requirements: "Whenever any State or political subdivision subject to the

prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language. . . ."

(Emphasis added). However, we have interpreted this statutory language as not requiring bilingual ballots in all circumstances. Section 55.18(d) of the guidelines provides, in part: "The Attorney General will consider whether polling place activities are conducted in such a way that members of the applicable language minority group have an effective opportunity to vote.

. . . If very few of the registered voters scheduled to vote at a particular polling place need minority language materials . . ., the Attorney General will consider whether an alternative system enabling those few to cast effective ballots is available." Section 55.19(d) of the guidelines provides, in part: "Where voting machines that cannot mechanically accommodate a ballot in English and in the applicable minority language are used, the Attorney General will consider whether the jurisdiction provides sample ballots for use in the polling booths. . . ."

On the basis of information furnished, Monterey County does not qualify for either exception. First, while there may be some polling places in which bilingual ballots are not required, the data you have provided indicate that this is not the case for the county as a whole. For example, your sampling of precincts, which contain fewer than ten percent of the registered voters in the county, reveals that 5.5 percent of the registered voters of Greenfield 2 and 8.7 percent of the registered voters of Salinas 20 requested Spanish

language materials. More importantly, however, these percentages represent 25 of the 111 Spanish surname voters in Greenfield 2 and 36 of the 110 Spanish surname voters in Salinas 20 requesting Spanish language material. In our view, these statistics do not represent "very few of the registered voters" scheduled to vote at those polling places within the meaning of our guidelines.

Second, you have provided no information showing that the punch card voting system used in Monterey County cannot "mechanically accommodate" a bilingual ballot. In your December 31, 1976, letter you explain why you chose not to provide a separate Spanish-only official ballot, but there is no indication that the option of a ballot using both English and Spanish was considered. We iterate here our view that a separate minority language ballot is not required by the Act and, in fact, may not be appropriate. In this regard, Section 55.19(c) of the guidelines, states: "The Attorney General will consider whether a jurisdiction provides the English and minority language versions on the same document. Lack of such bilingual preparation of ballots may give rise to the possibility, or to the appearance, that the secrecy of the ballot will be lost if a separate minority language ballot or voting machine is used."

With respect to nominating petitions, your plans state that "instruction manuals, nomination petitions, office procedures, campaign expenditure forms, etc., used solely by candidates will not be prepared bilingually." It is our understanding that nominating petitions need to be read and understood by voters who are asked to sign them. These petitions are therefore of the type of material subject to the minority language requirement. Section 55.19(a) of the guidelines states, in part: "A jurisdiction required to provide minority language materials is only required to publish in the language

of the applicable language minority group materials distributed to or provided for the use of the electorate generally. Such materials include, for example, ballots, sample ballots, information materials, and petitions."

Under the "captioning" plan, none of the election materials mailed to all voters, including those voters who have indicated a preference for Spanish language materials, will be mailed in a Spanish version. Voters who wish to receive such materials in the Spanish language will have to make a special request. While this may be an acceptable approach in those parts of Monterey County having a small percentage of persons of Spanish heritage, this does not in our view satisfy the Act (see Sections 55.17 and 55.18(a) */ of the guidelines) for areas in Monterey County in which there is a high proportion of citizens of Spanish heritage or in which there has been a significant number of requests for Spanish language materials. For example, we note that persons of Spanish heritage constitute approximately 27% of the population of Salinas, approximately 65% of Gonzales, approximately 85% of Soledad, approximately 50% of Greenfield, and approximately 33% of King City, all located in Monterey County. As we observed earlier, your sampling showed that 8.7 percent of the registered voters of Precinct Salinas 20 and 5.5 percent of the

*/We regret that a printing error has obscured the meaning of the second sentence of Section 55.18(a). That sentence, which was partially transposed, should read as follows: "For example, a separate mailing of materials in the minority language to persons who are likely to need them or to residents of neighborhoods in which such a need is likely to exist, supplemented by a notice of the availability of minority language materials in the general mailing in English and in the applicable minority language and by other publicity regarding the availability of such materials, may be sufficient."

registered voters of Precinct Greenfield 2 have requested Spanish language materials. Nothing shows that the rate of Spanish language requests will not be comparable in other precincts with concentrations of Spanish heritage population even absent our observations that such requests may not in fact be indicative of actual minority language needs.

An associated problem attends the "targeting" plan. There, although persons requesting bilingual materials on their registration cards will be provided bilingual election information and materials, no notice that bilingual materials are available will be provided in the universal sample ballot mailings. Thus, minority language voters needing minority language assistance are subjected to the requirement that they either execute a registration card indicating their need for such assistance or forego assistance in a language they understand, a requirement to which other voters are not subjected.

In your letter of December 31, 1976, you state: "Our sole intent is to make the electoral process available to all citizens of this County in the most cost effective manner possible." This articulation is consistent with the position we take in Section 55.16 of our guidelines: "In planning its compliance with Section 4(f)(4) or Section 203(c), a jurisdiction may, where alternative methods of compliance are available, use less costly methods if they are equivalent to more costly methods in their effectiveness." According to the information you have provided, however, the county's cost per voter would have been reduced 7¢ per voter, or 4 percent, in the 1976 primary election, and 10¢ per voter, or 6 percent, in the 1976 general election if the "captioning" plan had been used. Given the serious questions that have been raised concerning the effectiveness of the "captioning" plan and the relatively slight

reduction in cost to the county, we cannot conclude that the "captioning" plan is what is contemplated by the Voting Rights Act, as amended in 1975 and as construed in our guidelines.

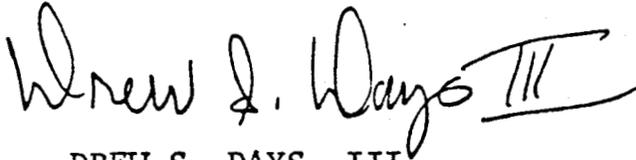
Finally, Section 55.16 of the guidelines also states: "A jurisdiction is more likely to achieve compliance with these requirements if it has worked with the cooperation of and to the satisfaction of organizations representing members of the applicable language minority group." We have been informed that you met with members of the League of United Latin American Citizens (LULAC), but that this organization voted to oppose the adoption of the plan under review. We have also been notified of opposition to the plan from the Mexican American Legal Defense and Educational Fund (MALDEF).

As a result of consideration of all of these factors, we cannot conclude, as we must under Section 5 of the Voting Rights Act, that Monterey County's plan for bilingual elections will not have the effect of denying or abridging the vote on account of membership in a language minority group. Therefore, I must, on behalf of the Attorney General, interpose an objection to these plans in the respects discussed above.

Of course, Section 5 permits Monterey County to seek a declaratory judgment from the United States District Court for the District of Columbia that the plan for bilingual elections 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. Until such a judgment should be obtained, the effect of the Attorney General's objection is to render the objected to changes in the procedures for bilingual elections unenforceable.

Sincerely,

A handwritten signature in cursive script that reads "Drew S. Days III". The signature is written in dark ink and is positioned above the typed name.

DREW S. DAYS, III
Acting Assistant Attorney General
Civil Rights Division