



U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 4 2003

Jean E. Wilcox, Esq.
Deputy County Attorney
110 East Cherry Avenue
Flagstaff, Arizona 86001-4627

Dear Ms. Wilcox:

This refers to the adoption of an alternative election system for board members of the Coconino Association for Vocations, Industry, and Technology, and the use of the Page, Fredonia-Moccasin, Grand Canyon, and Williams Unified School Districts' voting precincts and polling places by the district in Coconino County, Arizona, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our September 9, 2002, request for additional information through January 23, 2003.

With regard to the change to the alternative method of election, we have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information. Based on our analysis of this information, on behalf of the Attorney General, I am compelled to object to the submitted change in the method of election.

According to the demographic data you provided, the Coconino Association for Vocations, Industry, and Technology [CAVIAT] has a total population of 21,693, of whom 8,748 (40.3%) are American Indian. There are four constituent school districts: Page Unified School District, which has a total population of 13,096 persons, of whom 60.9 percent are American Indian; Williams Unified School District, which has a total population of 4,542 persons, of whom 3.2 percent are American Indian; Grand Canyon Unified School District, which has a total population of 2,185 persons, of whom 18.9 percent are American Indian; and Fredonia-Moccasin Unified School District, which has a total population of 1870 persons, of whom 11.1 percent are American Indian.

Arizona Revised Statutes §15-393 provides the participating districts in joint technological education districts, such as CAVIAT, with the discretion to choose a method of election system other than the single-member district system identified in the statute. However, when such a choice is not made at the time of the district's creation, members of the joint board are required to be elected from five equally populated, single-member districts.

As you note in your submission, the state board of education approved a plan for CAVIAT that did not identify an alternative method of election. Accordingly, at the time of its creation in 2000, the method of election for members of the CAVIAT board became the statutorily-mandated single-member district system as outlined in §15-393A which, in part, states:

Unless the governing boards of the school districts participating in the formation of the joint district vote to implement an alternative election system as provided in subsection B of this section, the joint board shall consist of five members elected from five single member districts formed within the joint district.

Between May 7 and May 14, 2002, the interim CAVIAT board and the participating districts in the CAVIAT joint district adopted an alternative method of election in which the voters in each of the constituent districts would elect one member of the joint board and one member would be elected from CAVIAT at large. But because the school boards participating in the CAVIAT district did not choose an alternative election system at the time the original plan was submitted to the state board of education, as required by §15-393B, under Arizona law the single-member district system came into force by default under §15-393A. It thus existed at the time the CAVIAT board and the participating school boards adopted the alternative method of election, and therefore is the benchmark against which we must measure the alternative method to determine whether it has a retrogressive purpose and or retrogressive effect. Mississippi v. United States, 490 F. Supp. 569 (D.D.C. 1979), aff'd, 444 U.S. 1050 (1980). See also, the Procedures for the Administration of Section 5, 28 C.F.R. 51.54.

Note that if the school boards participating in the CAVIAT district had instead chosen an alternative election method at the time the original plan was submitted to the state board of education, then that alternative method would have been the election system in place upon creation of the district by referendum in 2000, and the benchmark would have been the nonexistence of any prior voting mechanism.

Based upon information presented to the joint board by its staff and consultants, it appears that virtually any fairly-drawn, single-member district plan would result in voters in the Page district, the only one of the constituent school districts in which American Indians are a majority of the population, comprising a significant portion of the electorate for three of the positions, with two of these being majority American Indian. In fact, the board reviewed just such a plan and included it in its submission to the Attorney General. In addition, our independent review of the demographics confirms that it would be all but impossible to draw a constitutionally valid plan that did not contain two single-member districts with American Indian population majorities. Thus, within the context of the racially polarized voting that appears to occur in Coconino County elections, Native Americans could elect a candidate of choice to two positions under a single-member district system.

In contrast, our analysis establishes that the alternative method of election before us will afford Native American voters the ability to elect only one candidate of choice and that is in the Page district. This reduction in the number of board members that Native American voters have the ability to elect was not necessary to comply with any statutory or constitutional requirements. As such, the change is retrogressive within the meaning of Section 5.

A voting change has a discriminatory effect if it will lead to a retrogression in the position of members of a racial or language minority group (*i.e.*, will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively. Reno v. Bossier Parish School Board, 528 U.S. 320, 328 (2000); Beer v. United States, 425 U.S. 130, 140-42 (1976).

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. 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 that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the method of election.

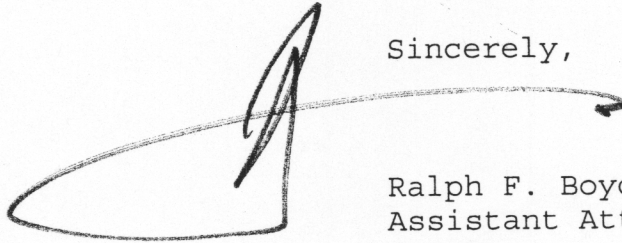
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection.

See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted change continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Because the voting precinct and polling place changes are directly related to the alternative election system, to which we are objecting, it is not necessary or appropriate for the Attorney General to make any determination on these related changes.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Coconino Association for Vocations, Industry, and Technology plans to take concerning this matter. If you have any questions, you should call Ms. Judith Reed (202-305-0164), an attorney in the Voting Section.

Sincerely,

A handwritten signature in dark ink, consisting of a large, stylized 'R' followed by 'F. Boyd, Jr.' and a long horizontal flourish extending to the right.

Ralph F. Boyd, Jr.
Assistant Attorney General