



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 17, 1987

Russell H. Burdick, Jr., Esq.  
Chief Deputy County Attorney  
P. O. Box 637  
St. Johns, Arizona 85936

Dear Mr. Burdick:

This refers to the multilingual (Spanish and Navajo) election procedures in Apache 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 the information to complete your submission on May 18, 1987.

We have considered carefully the information you have provided, as well as Census data and comments and information from other sources and interested parties. Regarding the submitted Spanish language election procedures, the Attorney General does not interpose any objection to the change in question. 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 such change. See Section 51.41 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)).

With respect to the proposed Navajo language election procedures, however, we cannot reach the same conclusion. Under Section 5, Apache County has the burden of showing that the submitted changes do 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. See Georgia v. United States, 411 U.S. 523 (1973); see also Section 51.52(a) (52 Fed. Reg. 497-498 (1987)). In determining whether the county has made that showing, the Attorney General must examine the proposed procedures in light of the minority language requirements of Sections 4(f)(4) and 203(c) of the Voting Rights Act, 42 U.S.C. 1973b(f)(4) and 1973aa-1a(c). See Section 51.55(a) (52 Fed. Reg. 498 (1987)).

Under the requirements of those provisions, any election information or assistance that Apache County provides in the English language must also be provided in the Navajo language. Because Navajo is historically an unwritten language, the Act requires only that the county provide such information in oral

form. With respect to all aspects of the electoral process, bilingual information must be provided so as to allow members of the language minority group "to be effectively informed of and participate effectively in voting-connected activities." See 28 C.F.R. 55.15.

While the county provides substantial information in English relating to all of the electoral procedures, we note that 55 percent of all Navajos of voting age in the county do not speak English adequately enough to participate effectively in an English-only electoral process. Yet, our analysis shows that the county disseminates virtually no information in the Navajo language regarding voter registration locations or procedures, candidate qualification deadlines or procedures, or absentee balloting. In addition, no effort is made to notify voters in the Navajo language that they are to be purged from the registration rolls or to disseminate such information through bilingual deputy registrars or Navajo communications media.

Nor does it appear that the county provides any training in the Navajo language to prepare Navajo poll workers for their bilingual election-day responsibilities. As a result, many Navajo-speaking voters seem not to receive effective translations of the ballot, particularly on various ballot propositions and special referenda issues. In addition, the county's practice of sending written English language materials to various reservation locations, without taking any steps to assure that the information is disseminated in Navajo, appears to be wholly ineffective as a means of communicating such information to the many Navajos who do not read English. In other words, county election officials apparently have no method of ensuring that election information is disseminated in Navajo to all areas of the Navajo reservation in the same complete, accurate, and consistent manner as exists for accomplishing this goal for English-speaking voters.

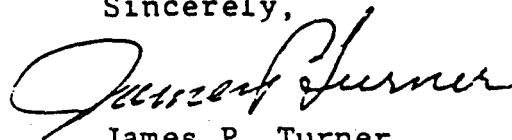
Accordingly, the factual circumstances indicate that the county has failed to provide the oral assistance Navajo citizens require to participate equally and effectively in the electoral process, in contravention of the bilingual provisions of the Voting Rights Act. Yet, you have acknowledged that the county has been aware, since at least 1980, of the need for oral Navajo language election procedures, in light of the decision in Apache County High School District No. 90 v. United States, C.A. No. 77-1815 (D.D.C. June 12, 1980). Nonetheless, the county maintains an election program that does not appear to meet the standards set forth in that decision, nor those in the Attorney General's language minority guidelines, even though the county has had ample time to adopt Navajo bilingual procedures in compliance with the Voting Rights Act. No nonracial reason has been advanced for the county's failure to provide even basic election information in Navajo.

For these reasons, then, I am unable to conclude that the county's procedures for making electoral information and assistance available in the Navajo language are sufficiently in compliance with the requirements of Sections 4(f)(4) and 203(c) of the Voting Rights Act to permit preclearance by the Attorney General under Section 5 of the Act. Accordingly, on behalf of the Attorney General, I must object to the proposed Navajo language procedures.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change is in fact entitled to preclearance under the Act. In addition, Section 51.45 of the guidelines (52 Fed. Reg. 496-497 (1987)) permits you to 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 effect of the objection by the Attorney General is to make the proposed election procedures legally unenforceable. See Section 51.10 (52 Fed. Reg. 492 (1987)).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Apache County plans to take with respect to this matter. If you have any questions, feel free to call Lora Tredway (202/724-8290), Attorney-Reviewer in the Section 5 Unit of the Voting Section.

Sincerely,



James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division