



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 4, 1991

Paul F. Eckstein, Esq.
Brown & Bain
P. O. Box 400
Phoenix, Arizona 85001-0400

Dear Mr. Eckstein:

This refers to the voter registration challenge and purge procedures for Coconino County, Arizona, submitted to the Attorney General pursuant Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on September 4, 1991; supplemental information was received on September 19, 1991.

We have considered carefully the information you have provided, as well as comments and information from other interested parties. At the outset, we note that Native Americans comprise approximately 29 percent of the county's population and that a significant proportion of the Native Americans in the county do not speak or write the English language. Further, mail delivery on the various Indian reservations is difficult, with few Native Americans receiving their mail at home. As you have described the proposed procedures, voters whose registration has been challenged would be mailed a questionnaire relating to their residency, which must be answered, notarized and returned within 45 days. If the questionnaire is not returned, the voter's registration will be cancelled.

You have stated that the county recorder has strong reservations about the legality, effect and appropriateness of the new procedures as a basis for cancellation of voter registration. The county recorder has also expressed concern that the use of these procedures "will have a disparate impact on minorities--in particular, the nearly 10,000 Native Americans living in Coconino County." Under current Arizona law, a

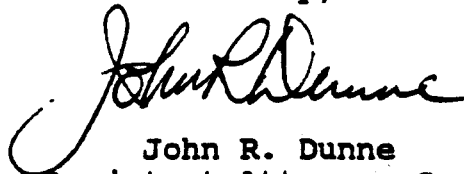
properly executed affidavit of registration creates a presumption that the registrant is a resident of the county. The proposed procedures would appear to reverse that presumption if, upon challenge, a voter fails to return the proposed questionnaire. Moreover, it appears that the county has not established an appropriate method for implementing the new procedures in compliance with the county's bilingual responsibilities under federal law. Thus, the proposed procedures appear likely to have a retrogressive effect on the voting rights of Native Americans in the county.

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 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 the county's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted changes.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court of 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, 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 proposed voter challenge and purge procedures continue to be legally unenforceable. Clark v. Roemer, 59 U.S. L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10.

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 Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division