U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

JUN 10 1992

Lisa T. Hauser, Esq.
Assistant Attorney General
1275 West Washington
Phoenix, Arizona 85007

Dear Ms. Hauser:

This refers to the 1992 redistricting for the Senate and the House of Representatives for the State of Arizona, and Chapter 2, sections 1 and 2 (1992), which amends statutory deadlines to designate county voting precinct boundaries, reclassify voter registration according to the new precincts, and count registered voters by precinct following the 1992 redistricting for the House and Senate, 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 responses to our request for additional information on April 21, May 8, May 15, May 20, and May 21, 1992; supplemental information was received on June 5, 1992.

We have carefully considered the information the state has provided, as well as Census data and information and comments from other interested persons. As it applies to the redistricting process, the Voting Rights Act requires that the Attorney General determine whether the submitting authority has sustained its burden of showing that the proposed plan is free of the proscribed discriminatory purpose or effect. In addition, the submitted plan may not be precleared if its implementation would result in a clear violation of Section 2 of the Act. In the case of a statewide redistricting such as the instant one, this examination requires us not only to review the overall impact of the plan on minority voters, but also to understand the reasons for and the impact of each of the legislative choices that were made in arriving at this particular plan.

In making these judgments, we apply the legal rules and precedents established by the federal courts and our published administrative guidelines. See, e.g., 28 C.F.R. 51.52 (a), 51.55, 51.56. For example, we cannot preclear those portions of a plan where the legislature has deferred to the interests of incumbents while refusing to accommodate the community interests shared by insular minorities. See, e.g. Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1992); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Such concerns are frequently related to the unnecessary fragmentation of minority communities. See 28 C.F.R. 51.59. We endeavor to evaluate these issues in the context of the demographic changes which compelled the particular jurisdiction's need to redistrict (id.). Finally, our entire review is guided by the principle that the Act ensures fair election opportunities and does not require that any jurisdiction attempt to guarantee racial or ethnic proportional results.

With these considerations in mind, we have reviewed the legislative choices made by the State of Arizona. Demographic changes in the state during the past decade have resulted in an overall population increase. Among minority groups, the Hispanic growth has been the most significant. The Hispanic population has grown at a rate of 56 percent, and there has been a 2.6 percentage point increase (from 16.2 to 18.8) in the Hispanic proportion of the total population from 1980 to 1990. Our analysis shows that, in large part, the Arizona House and Senate redistricting plan meets Section 5 preclearance requirements.

In the southeastern area of the state, however, the proposed configuration of district boundary lines appears to have been drawn in such a way as to minimize Hispanic voting strength. Specifically, we refer to the considerable concentration of Hispanic population in Santa Cruz County (78% Hispanic in population), which the submitted plan divides among three legislative districts (Districts 8, 9 and 11). We are aware that alternative plans were rejected which would have avoided this fragmentation and more fairly recognized this concentration of Hispanic voters by dividing them between two districts, thereby creating an additional district in the southern part of the state in which Hispanic voters would have the potential to elect representatives of their choice. Insufficient nonracial explanations have been advanced for this unnecessary fragmentation. While we have noted the state's explanation that the proposed districting in this

area was designed to accommodate the interests of certain white incumbents, and even though incumbency protection is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. Garza v. County of Los Angeles, 918 F.2d at 771; Ketchum v. Byrne, 740 F.2d at 1408-09.

Therefore, in light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the 1992 redistricting plan for the Arizona State Senate and House of Representatives to the extent that it incorporates the proposed configurations for the area discussed above.

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 1992 Senate and House redistricting plan has 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 1992 redistricting plan for the Senate and House of Representatives continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1992); South Carolina v. United States, 585 F. Supp. 418 (D.D.C. 1984); 28 C.F.R. 51.10 and 51.45.

The remaining specified changes occasioned by Chapter 2 (1992) are directly related to the proposed 1992 Senate and House redistricting plan. Therefore, the Attorney General is unable to make any determination at this time with regard to the proposed amendments to statutory deadlines. See 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Arizona plans to take concerning this matter. In this regard, the Department stands ready to review any plan the legislature might adopt to remedy this objection on an expedited basis. If you have any questions, you should call Rebecca Wertz (202-514-6342), Deputy Chief of the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division