

Mr. Kenneth L. Randol
Merced County Clerk
2222 M Street
Merced, California 95340

APR 3 1992

Dear Mr. Randol:

This refers to the redistricting plan for the board of supervisors in Merced County, California, 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 your responses to our request for additional information on February 3 and 18, 1992.

We have considered carefully the information you have provided, as well as information from other interested parties. The 1990 Census reports that Hispanics constitute approximately one-third of the county's population, and that the Hispanic share of the county's population grew substantially during the 1980s. Under the existing districting plan, the Hispanic share of the population is greatest in District 2, where Hispanics currently comprise about 42 percent of the population. During the redistricting process the county demographer's alternative plans showed that Hispanic voting strength in that district could be increased to more than a majority of its population by eliminating the fragmentation of the Hispanic community around the City of Merced and by including the City of Livingston in District 2. Members of the Hispanic community, as well as persons from the black community, urged the adoption of a plan that recognized the increased minority population in the county.

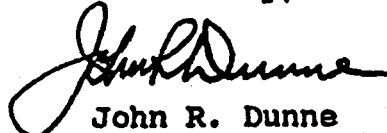
The county, however, rejected the approach to redistricting developed by its demographer and has submitted a plan in which Hispanics are not a majority of the population in any district. We have reviewed the county's stated reasons for its decision and are concerned that a desire to protect the incumbent supervisors may have prevailed over the interest of providing minorities an opportunity to elect their preferred candidate. Incumbency protection may in the appropriate circumstances be a proper redistricting goal but we cannot preclear a plan where such protection is obtained at the expense of recognizing the community of interest shared by insular minorities. See, e.g., Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).

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. See 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 redistricting plan.

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 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 redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Merced County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division