

AUG 8 1978

Honorable Ernest F. Smith
County Judge
Harrison County
Post Office Drawer A
Marshall, Texas 75670

Dear Judge Smith:

This is in reference to the 1975 redistricting of commissioner precincts in Harrison County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, as amended. Your original submission was received on March 25, 1976. Additional information was requested on May 24, 1976 but to date has not been received.

Under Section 5 the burden is on the jurisdiction proposing a voting change to show that the new practice or procedure is not discriminatory in purpose or effect. The burden of proof is the same when a submission is made to the Attorney General as it would be in a suit for a declaratory judgment under Section 5 brought in the United States District Court for the District of Columbia. See Georgia v. United States, 411 U.S. 526 (1973). The Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.19, state:

If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the above-described burden of proof applicable in the district court, enter an objection . . .

cc: Public File

We have given careful consideration to the information originally furnished by you as well as Bureau of the Census data and information and comments from interested parties. In our analysis we are guided by relevant judicial decisions. See, for example, Kirksey v. Board of Supervisors of Hinds County, 554 F.2d 139 (5th Cir.) cert. denied, 5 W.S.L.W. 3357 Nev. 12 (1977); Robinson v. Commissioners Court, 505 F.2d 674 (5th Cir. 1974).

Our analysis reveals that blacks constitute 36 percent of the population of Harrison County. The statistical information that you have provided does not enable us to compare the racial composition of the new commissioner precincts with that of the old. Our research indicates that the county's black population is fairly evenly distributed among the four precincts and, in addition, we understand that the blacks were not consulted concerning the creation of this plan. We note also that blacks have not been elected to the county commission or to other county offices.

Under these circumstances we are unable to conclude, as we must under the Voting Rights Act, that the new redistricting plan for commissioner precincts does not have the purpose and will not have the effect of diluting minority voting strength in Harrison County. Accordingly, on behalf of the Attorney General, I must interpose an objection to the redistricting of commissioner precincts in Harrison County.

Under the Procedures for the Administration of Section 5 of the Voting Rights Act (42 C.F.R. 51.21(b) and (c), 51.23, and 51.24) you may request the Attorney General to reconsider this objection. In addition, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. However, until the objection is withdrawn or such a judgment is rendered by that Court, the legal effect of the objection by the Attorney General is to render the change unenforceable.

As this matter is the subject of litigation in the District Court for the Eastern District of Texas, Marshall Division (Watson v. Harrison County, C.A. No. M-75-45-CA), I am taking the liberty of sending a copy of this letter to United States District Judge William M. Steger and to counsel in that case.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc:
United States District Judge William M. Steger
Larry R. Daves, Esquire
Phillip Brin, Esquire