



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

May 4, 1993

Robert T. Bass, Esq.
Allison and Associates
Wahrenberger House
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the procedures for conducting the January 5, 1993, special local option election in Bailey County, Texas, 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 initial submission on March 5, 1993; supplemental information was received on March 15, 1993.

We have carefully considered the information you have provided as well as information contained in previous Section 5 submissions concerning Bailey County's justice of the peace districts. As you are aware, on April 6, 1992, the Attorney General interposed an objection to the county's submission of a 1991 redistricting plan to be used to elect members of the commissioners court, as well as justices of the peace and constables. On two occasions, July 6 and September 28, 1992, the Attorney General denied requests of the county to withdraw the objection.

We understand that under state law, special local option elections like the one under review may be held upon the petition of county residents either county-wide, within the boundaries of an incorporated city or town, or within the boundaries of a "justice precinct," i.e., an election district for justice of the peace. According to information provided in your submission, county officials permitted local residents to circulate their petitions within the boundaries of Justice Precinct No. 4 as drawn in the 1991 redistricting plan to which the Attorney General had interposed an objection.

Subsequently, the county confirmed that the number of signatures obtained were sufficient to trigger an election in this district, and the county held this election on January 5, 1993, using the objected-to district boundaries. Changes in procedure which affect voting are unenforceable without Section 5 preclearance. Clark v. Roemer, 111 S. Ct. 2996 (1991); Procedures for the Administration of Section 5 (28 C.F.R. 51.10). We note that the county's use of unprecleared district boundaries for Justice Precinct No. 4 occurred well after Bailey County received notice of our initial objection to those boundary lines and the subsequent maintaining of that objection on two separate occasions.

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 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 your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the procedures for conducting the January 5, 1993, special local option election.

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 change 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. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the special election procedures continue to be legally unenforceable.

If you have any questions regarding this matter, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division