



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

May 10, 1993

Virginia Daugherty, Esq.  
Daugherty & Associates  
P.O. Box 15507  
Amarillo, Texas 79105

Dear Ms. Daugherty:

This refers to the 1993 redistricting plan for commissioner court districts, the renumbering of voting precincts, realignment of voting precincts, the creation of a voting precinct and the polling place therefor, and a polling place change for Castro 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 submission on March 9, 1993; additional information was received on April 27 and 28, and May 3, 1993.

We have considered carefully the information provided in this submission and in the county's submissions of its 1991 and 1992 redistricting plans, as well as Census data and information and comments received from other interested persons. As you know, we interposed Section 5 objections to both the 1991 and 1992 redistricting plans.

When we objected to the 1991 redistricting plan, we explained that the county had not demonstrated any nonracial explanation for its failure to provide for even one Hispanic district in which Hispanic voters would have a realistic opportunity to elect candidates of their choice. We noted that under the 1991 plan two districts (Districts 1 and 3) were majority Hispanic in total population and voting age population but that our analysis indicated that Hispanics did not constitute a majority of the eligible voting age population in either district because of the presence of a noncitizen Hispanic population in the county. We further noted that this noncitizen population is particularly concentrated in two areas of migrant farmworker housing, Azteca apartments and Coronado Acres. Despite the lack of Section 5 preclearance, the county implemented the 1991 redistricting plan in the 1992 primary elections for commissioners court.

In 1992, following our objection, the county adopted a redistricting plan that shifted the district with the highest Hispanic population percentage from District 3 in the objected-to plan to District 2 in the proposed plan in an attempt to validate its implementation of the unprecleared plan in the county's 1992 primary elections. We noted that the effect of this shift, because of the county's system of staggering terms, was unnecessarily to delay for two years the opportunity afforded Hispanic voters to elect their candidates of choice. Accordingly, the Attorney General interposed an objection to the county's 1992 plan.

The 1993 redistricting plan now under review has two districts (Districts 1 and 3) with Hispanic total population percentages of 62.9 and 69.6 percent, respectively. District 1 includes the town of Hart, the southeast quadrant of the county and southern portions of the town of Dimmitt. District 3 extends through the northwest quadrant of the county and includes the Coronado Acres development and part of the town of Dimmitt. A third district which is 29 percent Hispanic in total population, District 4, cuts through a majority-Hispanic community in the southern half of the City of Dimmitt, thereby fragmenting this Hispanic population among Districts 1, 3 and 4.

Our analysis of voter registration and voter turnout estimates indicates that this fragmentation in south Dimmitt would unnecessarily limit the ability of Hispanic voters to elect their candidates of choice in proposed District 3. The turnout data you have supplied indicates a significant disparity between the rates of Hispanic and non-Hispanic turnout in the county, as a whole as well as in the precincts that comprise most of proposed District 3. Thus, the fragmentation of the Hispanic population concentration in South Dimmitt between three of the proposed districts is significant in light of the turnout disparities.

We have considered and found unpersuasive the county's contention that this fragmentation of the Hispanic population concentration in south Dimmitt is unavoidable. We note that the county considered and rejected at least one redistricting alternative that would have gone far toward remedying that fragmentation by unifying most of the Hispanic core population in Dimmitt into District 3 while at the same time resulting in a 73 percent Hispanic share of total population in that district. Other alternative approaches would appear to have been readily discernible, as well. While the county is not required by Section 5 to adopt any particular redistricting plan, it is not free to adopt plans that unnecessarily dilute minority voting strength.

In addition, it appears that the county's redistricting decisions have been made to foster the interests of incumbents on the commissioners court. We recognize that the protection of incumbents may not in and of itself be an inappropriate consideration, but it may not be accomplished at the expense of minority voting potential. See Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991).

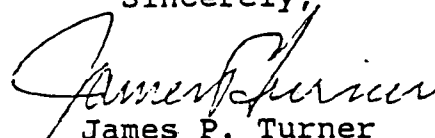
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1993 redistricting plan for the commissioners court.

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. 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 1993 redistricting plan for the commissioners court continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the voting precinct and polling place changes are dependent upon the objected-to redistricting, the Attorney General will make no determination with regard to them. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Castro County plans to take concerning this matter. If you have any questions, you should call Robert Kengle (202-514-6196), an attorney in the Voting Section.

Sincerely,



James P. Turner

Acting Assistant Attorney General  
Civil Rights Division