



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

Irene E. Foxhall, Esq.
Mayor, Day, Caldwell & Keeton
700 Louisiana, Suite 1900
Houston, Texas 77002-2778

AUG 30 1993

Dear Ms. Foxhall:

This refers to the 1992 redistricting plans for the commissioners court and justices of the peace/constables for Wharton 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 further response to our request for additional information on June 30, 1993; supplemental information was received on August 20, 1993.

We have carefully considered the information you have provided, data from the 1990 Census, and information from other interested persons. According to the 1990 Census, Hispanic and black residents constitute, respectively, 25.3 percent and 15.4 percent of the county's total population. The commissioners court consists of four members elected from single-member districts and the county judge, elected at large. We note that Wharton County currently uses the same districting plan to elect members of the commissioners court, justices of the peace and constables and that the proposed plan continues this practice. Apparently, no Hispanic or black person has been elected to county office in Wharton County in this century.

Our analysis of the county's demographic patterns shows that it is not possible to create a commissioners court district in which either Hispanic persons or black persons constitute a majority of the population. The information available to us suggests that the county's redistricting approach rested upon its assumption that Hispanic and black voters are not politically cohesive in Wharton County.

The absence of any voting precincts in Wharton County that have a Hispanic population majority precludes any definitive statistical assessment of Hispanic-black cohesion. However, anecdotal information that we obtained during our review supports

the conclusion that Hispanic and black voters are politically cohesive in Wharton County. The county has proffered no justification for its apparent failure to explore nonstatistical information relevant to the issue of minority cohesion.

Under the county's proposed plan, Hispanics and blacks combined would be a majority of the population in two districts, Districts 2 (centered around the City of Wharton) and 4 (centered around El Campo). However, in view of the apparent pattern of racially polarized voting in county elections and other factors, it would appear that neither of those districts will afford minority voters a real opportunity to elect candidates of their choice. One aspect of the proposed plan is the division of a predominantly minority area of the City of Wharton between Districts 2 and 4. We understand that, during the redistricting process, the plaintiffs in the pending one-person, one-vote lawsuit, Jackson v. Wharton County, No. H-92-2294 (S.D. Tex.), offered alternative plans that avoided such fragmentation, but that the county rejected those plans for a number of reasons, including their effect on commissioner services in rural areas. While the county is not required by Section 5 to adopt any particular plan, it is not free to adopt a plan that results in unnecessary fragmentation of minority population concentrations.

It appears that the Jackson plaintiffs made it clear from the start of the litigation that they were interested in reaching a compromise that included an increase in the minority percentage of District 2. The plaintiffs' view recognized that the black population of Wharton County, especially in the City of Wharton area, has a higher level of political participation than does the Hispanic population. On November 5, 1992, the plaintiffs' attorneys met with the county's attorneys and expert and made specific suggestions for modifying the county's proposed plan in order to increase the minority percentage in District 2. Although the plaintiff did not draw up plans embodying the suggestions made at the meeting, nothing prevented the county from pursuing the suggested alternatives. Our analysis reveals that there were easily discernible alternative districting options, consistent with the county's stated redistricting criteria, that would avoid the limiting of minority voting strength occasioned by the fragmentation evident in the proposed plan. The county has not provided a sufficient explanation for its failure to explore such alternatives.

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. 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

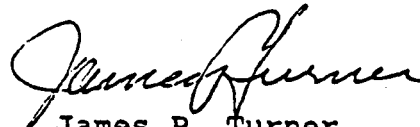
conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1992 redistricting plans.

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 changes have 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 redistricting plans continue to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Wharton County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Because the Section 5 status of the proposed commissioners court plan is a matter before the court in Jackson v. Wharton County, we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Melinda Harmon
United States District Judge

Rex VanMiddlesworth, Esq.
Jose Garza, Esq.
Judith Sanders-Castro, Esq.

JPT:GS:DBM:lrj
DJ 166-012-3
92-5239

November 22, 1993

Irene E. Foxhall, Esq.
Mayor, Day, Caldwell & Keeton
700 Louisiana, Suite 1900
Houston, Texas 77002-2778

Dear Ms. Foxhall:

This refers to your request that the Attorney General reconsider the August 30, 1993, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1992 redistricting plan for the commissioners court and justices of the peace/constables for Wharton County, Texas. We received your letter on September 23, 1993.

Your November 12, 1993, letter withdraws your request from Section 5 review. Accordingly, no determination by the Attorney General is required concerning this matter. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.25(a)). We will proceed with our review of your 1993 redistricting plan for the commissioners court and justices of the peace/constables, submitted under Section 5 on November 15, 1993 (File No. 93-4359).

Because the Section 5 status of the proposed commissioner districts is a matter before the court in Jackson v. Wharton County, No. H-92-2294 (S.D. Tex.), we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

cc: Honorable Melinda Harmon
United States District Judge

Rex VanMiddlesworth, Esq.
Jose Garza, Esq.
Judith A. Sanders-Castro, Esq.

cc: Public File