



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

AUG 15 1994

The Honorable Ronald Kirk
Secretary of State
221 E. 11th Street
Third Floor
Austin, Texas 78701

Dear Mr. Secretary:

This refers to Chapter 38 (1987), which creates, and provides an implementation schedule for, four criminal court judgeships (Nos. 7-10); and Chapter 354 (1993), which abolishes Criminal Court No. 5, creates a new Criminal Court of Appeals, and establishes candidate qualifications and compensation for that court in Tarrant 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 submissions on July 14, 1994.

We have given careful consideration to the information you have provided, as well as data from the 1990 Census, comments received from interested persons, and information in our files, as well as the record in relevant judicial decisions. The Attorney General does not interpose any objection to the specified changes in Chapter 354 (1993). However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the voting changes in Chapter 38 (1987), I cannot come to the same conclusion. In Tarrant County, black persons constitute 12 percent of the total population as do Hispanic persons. Our review of the county's electoral history, beginning in 1982, indicates that no black person and only one Hispanic has ever served as a county criminal court judge.

The four additional county criminal court judgeships established by Chapter 38 are to be elected at large by numbered place. The election of judges by such numbered judicial districts has the effect of eliminating the ability of minority voters to utilize single-shot voting. Nomination for these judicial posts is subject as well to the general requirement in Texas law that a successful candidate must obtain a majority of the votes cast in a party primary.

Numerous federal court decisions prior to 1987 chronicled instances where at-large elections, numbered place requirements, and the runoff system were adopted in Texas for clearly discriminatory motives, and where their use has produced the intended discriminatory results. Tarrant County is among those jurisdictions where the federal courts have found that these electoral factors have resulted in discrimination in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973. In addition, review of our records shows that prior to 1987 the Attorney General had interposed objections under Section 5 on 38 occasions to the adoption of numbered posts and on 24 occasions to adoption of a majority vote requirement by various Texas jurisdictions.

We have analyzed the state's decision to expand the at-large system for electing Tarrant County criminal court judges in 1987 against this background. It appears that in creating Tarrant County Criminal Court Nos. 7 through 10 in 1987 the state understood that the method of electing the proposed judgeships would have a racially discriminatory impact but decided to use this election scheme rather than an alternative method of selecting judges that would be fair to racial and ethnic minorities. We recognize that the state asserts that it had an interest in adding these four courts in order to relieve an overcrowded docket. However, the state has not shown that serving that interest need be tied to expanding the existing at-large system of electing these judges or the additional requirement that judicial candidates qualify for particular numbered judicial posts.

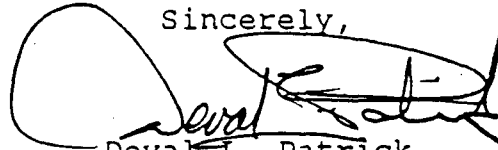
In reaching our decision, we are not unmindful of the recent decision of the United States Court of Appeals for the Fifth Circuit in League of United Latin American Citizens v. Clements, 999 F.2d 831 (5th Cir. 1993) (en banc), cert. denied, 114 S. Ct. 878 (1994), which held that the method of electing district court judges in Tarrant and other counties does not violate Section 2 of the Voting Rights Act. We note, however that criminal court judgeships in Tarrant County were not among the offices at issue in that litigation. Nor does the record in that case include evidence concerning the legislation at issue in this submission or recent judicial election contests.

Moreover, the LULAC decisions do not affect the legal standards to be applied when jurisdictions seek preclearance of voting changes under Section 5. See, e.g., City of Richmond v. United States, 422 U.S. 358, 373-374 n.6. (1975). Thus, in light of our conclusion that the state has failed to meet its burden of showing that the changes under submission are not designed to dilute minority voting strength, it is unnecessary to reach the question of whether use of the at-large election system with numbered posts and a majority vote requirement would violate Section 2 of the Voting Rights Act. See 28 C.F.R. 51.55.

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 creation of, and implementation schedule for, Tarrant County Criminal Court Nos. 7 through 10 as provided in Chapter 38 (1987).

Since the Section 5 status of Chapter 38 (1987) and Chapter 354 (1993) is a matter before the court in Texas v. United States, No. 1:94CV01529 (D.D.C.), we are providing copies of this letter to the court and counsel of record in that case.

Sincerely,



Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: Honorable Thomas Penfield Jackson
Honorable John Garrett Penn
United States District Judges

Honorable Harry T. Edwards
United States Circuit Judge

Renea Hicks, Esq.