U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

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Dear Ms. Hauser and Mr. Rivera:

This refers to the 2001 legislative redistricting plan for the State of Arizona, submitted by the Arizona Independent Redistricting Commission [AIRC] to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our March 26, 2002, request for additional information through May 16, 2002.

We have considered carefully the information you have provided, as well as census data, comments and information from other interested parties, and other information. As discussed further below, I cannot conclude that the Arizona Independent Redistricting Commission has sustained its burden under Section 5 in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 legislative redistricting plan for the State of Arizona.

The 2000 Census indicates that the state has a total population of 5,130,632, of whom 25.3 percent are Hispanic, 4.9 percent are Native American, and 3.2 percent are African American. The state's voting age population [VAP] is 3,763,685, of whom 21.3 percent are Hispanic, 4.1 percent are Native American, and 2.8 percent African American. One of the most significant changes to the state's demography has been the increase in the Hispanic population. Between 1990 and 2000, the

Hispanic share of the population increased from 18.8 percent to 25.3 percent.

Under the Voting Rights Act, a jurisdiction seeking to implement a proposed change affecting voting, such as a redistricting plan, must establish that, in comparison with the benchmark standard, practice, or procedure, the proposed change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." See Beer v. United States, 425 U.S. 130, 141 (1976). In addition, the jurisdiction must establish that the change was not adopted with an intent to retrogress. Reno v. Bossier Parish School Board, 528 U.S. 320, 340 (2000). Finally, the submitting authority has the burden on demonstrating that the proposed change has neither the prohibited purpose nor effect. Id. at 328; see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

The constitutional requirement of one-person, one-vote mandated that the state reapportion the legislative districts in light of the population growth since the last decennial census. We note that the state's redistricting plan was devised by the Arizona Independent Redistricting Commission [AIRC], which had assumed reapportionment responsibilities under Proposition 106 of the Arizona Constitution.

The Arizona Legislature consists of a House of Representatives and Senate. There are sixty representatives, two from each of the state's thirty legislative districts. There are thirty senators, one from each legislative district. Senators and representatives serve two-year terms. Under the benchmark plan, there is one district (District 3) in which American Indians are a majority of the population and seven districts (Districts 5, 7, 8, 10, 11, 22, and 23) in which Hispanic persons are a such majority; in five of these districts (3, 10, 11, 22, and 23), a majority of the voting age population are minority individuals. In these eight district our analysis indicates the minority voters within the district have the ability to elect their candidate of choice. This is the benchmark plan for our analysis. Because retrogression is assessed on a state-wide basis, the State may remedy this impermissible retrogression either by restoring three districts from among these problem areas, by creating three viable new majority minority districts elsewhere in the State, or by some combination of these methods.

According to your submission, the AIRC claims the proposed plan contains ten districts (Districts 2, 13-16, 23-25, 27, and 29) in which minority voters will be able to elect candidates of their choice. However, based on the information provided, we have determined that the AIRC has not met its burden of establishing that minority voters will continue to be able to elect candidates of their choice in five districts (Districts 13, 14, 15, 23, and 29). As a result, the proposed plan, which results in a net loss of three districts from the benchmark plan in which minority voters can effectively exercise their electoral franchise, is retrogressive. We detail those five instances below. Because retrogression is assessed on a state-wide basis, the State may remedy this impermissible retrogression either by restoring three districts from among these problem areas, by creating three viable new majority minority districts elsewhere in the State, or by some combination of these methods.

Proposed Districts 13 and 14

In southwest Phoenix, Hispanic voters from benchmark District 22 will lose their present ability to elect their candidate of choice. Under the proposed plan, the majority of the benchmark district is split between proposed districts 13 and 14. The Hispanic voting age population in the benchmark district (65.0%) decreases to 51.2 and 50.6 percent in proposed Districts 13 and 14, respectively. Historically, a district with an Hispanic voting age population percentage of that level, which is virtually identical to benchmark District 20, has not been one in which Hispanic voters have been able to elect a candidate of their choice.

The AIRC has not shown that a level of Hispanic voting age population, which has been inadequate to afford Hispanic voters with the ability to elect their candidate of choice in benchmark District 20, is sufficient to afford that opportunity in either proposed District 13 or 14. Thus, the fragmentation of benchmark District 22 into two districts eliminates one district where Hispanic voters had consistently elected their candidates of choice. Further, the AIRC also has failed to show that the proposed plan creates another district, either in the southwest Phoenix area or elsewhere in the state, to compensate for the loss of Hispanic electoral opportunity in the benchmark district.

Proposed District 15

The AIRC has designated proposed District 15 in central Phoenix with a 43.6 percent Hispanic voting age population, as a district in which Hispanics could elect a candidate of their choice. However, our analysis is unable to confirm that this is case. The proposed district was created from benchmark Districts 18, 20, 23, 25, and 26.

Proposed District 15 contains 31,729 people from benchmark District 23, of whom 72.2 percent are Hispanic. Since at least 1996, minorities in benchmark District 23 were consistently able to elect their candidates of choice. After the 2000 general election, this district's three legislative representatives were all candidates of choice of benchmark District 23 minority voters. However, the majority of proposed District 15 comes from benchmark District 25, which contained a Hispanic voting age population of 33.7 percent. We have not been able to conclude, based on the information provided by the AIRC concerning the electoral behavior of the Hispanic voters from benchmark District 25, that the addition of these voters to those from benchmark district 23 will not result in the elimination of the electoral ability currently enjoyed by minority voters in benchmark District 23.

District 23

Proposed District 23 was created out of parts of six benchmark legislative districts in the greater Phoenix area, encompassing parts of Maricopa and Pinal Counties. More than 74 percent of the proposed district comes from benchmark District 7. Hispanics are the largest minority group in both the benchmark and the proposed districts. They constitute 34.2 percent of the population in the benchmark District 7 and 29.5 percent in proposed district 23. Our information is that Hispanics voters were able to elect candidates of their choice in benchmark District 7. In benchmark District 7, 30.2 percent of the voting age population was Hispanic. As proposed, the Hispanic voting age population in District 23 is 25.7 percent. Over the past decade, this district's Hispanic community elected their candidates of choice for state senator and state representative.

In creating the proposed district, the AIRC made several adjustments. For example, the towns of San Manuel (46.2% Hispanic) and Oracle (38.3% Hispanic), both of which had been in

existing District 7 were removed while the entire city of Casa Grande (39.1% Anglo) and virtually all of Apache Junction (87.9% Anglo) were placed into proposed District 23.

We have attempted to analyze the electoral behavior in both the benchmark and proposed districts but have been unable to determine whether the Hispanic voters will continue to exercise their electoral franchise effectively in the proposed district. In addition, the circumstances surrounding the removal of these two towns and the resulting drop in the Hispanic voting age population percentage, has raised concerns regarding the ability of the AIRC to establish that this action, which had a retrogressive effect, may also have been taken, at least in part, with a retrogressive intent.

District 29

We also have not been able to conclude that proposed District 29, located in central and south Tucson, provides Hispanic voters with the ability to elect a candidate of their choice. The proposed district combines benchmark Districts 9, 10, 11, and 14 with a Hispanic voting age population of 45.1 percent. A majority of proposed District 29's population is from benchmark District 10, which had a Hispanic voting age population of 55.3 percent. The AIRC has presented no credible evidence by which we could conclude that this drop of eight percentage points in the Hispanic voting age population percentage will result in the continued ability of voters in proposed District 29 to elect candidates of their choice.

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 Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Because the AIRC has failed to demonstrate the proposed plan is not retrogressive, either in purpose or effect, it is necessary to interpose an objection. However, some of the concerns identified result from our inability to reach the conclusion that it met the requisite Section 5 burden. Thus, if the AIRC can present evidence that satisfactorily establishes the absence of both the prohibited purpose or effect, we would be willing to reconsider this objection pursuant to the applicable provisions of Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c 28 C.F.R. 51.45.

We note that under Section 5 you have a right to seek a declaratory judgement from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a minority language group. See 28 C.F.R. 51.44. However, until the objection in withdrawn, or a judgement from the District of Columbia Court is obtained, the 2001 legislative redistricting plan for the State of Arizona continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (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 the State of Arizona plans to take concerning this matter. If you have any questions, you should call Mr. Robert Berman (202/514-8690), Deputy Chief of the Voting Section.

We are aware the issue of the AIRC's compliance with Section 5 regarding implementation of the state's legislative redistricting plan is pending before a three judge court in Navajo Nation v. Arizona Independent Redistricting Commission, (D. Ariz). Accordingly, we are providing the Court as well as counsel of record in that case with a copy of this letter.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General

GILA COUNTY
REDISTRICTING ADVISORY COMMITTEE GUIDELINES
Revised, June 7, 2011

In an effort to ensure a fair and unbiased redistricting, a fair and unbiased selection process of Redistricting Advisory Committee members, and a clear understanding of the role of the Committee members, the Gila County Board of Supervisors hereby adopts the following guidelines:

1. Each year following the decennial census, a Gila County Redistricting Advisory Committee (hereinafter "Committee") shall be established to provide recommendations for the redistricting of Gila County Supervisorial districts and Gila County Community College Precincts (districts).

2. Committee Selection Guidelines:

   a) Each year following the decennial census, the Board of Supervisors, or its designee, shall establish a pool of persons who are willing to serve on and are qualified for appointment to the Committee.

   b) Members of the public able to conform to selection guidelines and who are interested in serving on the Committee should contact their respective Gila County Supervisor to be placed on the nomination list.

   c) Each member shall be a registered Arizona voter who has been continuously registered with the same political party, or registered as unaffiliated with a political party, for two or more years immediately preceding appointment.

   d) Within the three years previous to appointment, members shall not have: (1) been appointed to, elected to, or a candidate for any partisan public office or community college board; (2) served as an officer of a political party; (3) served as a registered paid lobbyist; nor (4) served as an officer of a candidate's campaign committee.

   e) Current County Employees may not serve as members of the Committee.

   f) During tenure of the Committee and for three years thereafter, Committee members shall be ineligible for partisan public office or for registration as a paid lobbyist.

   g) The Gila County Division of Elections shall review related applicant background information and remove any applicant who does not meet the qualifications of these guidelines.

   h) All applicants who meet the qualifications of these guidelines according to the Gila County Division of Elections shall constitute the Gila County Redistricting Advisory Committee Applicant Pool.

i) The Committee shall consist of twelve members. No more than five members of the Committee shall be members of the same political party and at least two members of the Committee shall not be registered with either of the two largest political parties in Arizona.

3. Appointments to the Committee shall be made as follows:

   a) The Chairman of the Board of Supervisors shall make one appointment to the Committee from the Gila County Redistricting Advisory Committee Applicant Pool followed by one appointment from the pool made in turn by each of the following: the Vice Chair of the Gila County Board of Supervisors, and the third member of the Board of Supervisors. This process is repeated until all members are appointed.

   b) Any vacancy in Committee positions remaining as of March 1 of the year following the decennial census shall be filled from the pool of nominees by action of the Board of Supervisors and shall be consistent with all provisions of paragraph 2 above.

4. Duties and Responsibilities of Committee members include, but are not limited to:

   a) Select a chair and vice chair. The Committee members shall select by majority vote one of their members to serve as chair and one of their members to serve as vice-chair. If the Committee fails to select a chair or vice chair, the Board of Supervisors shall appoint a chair or vice chair from amongst the members.

   b) Work on the Committee in an honest, independent, and impartial fashion to uphold public confidence in the integrity of the redistricting process.

   c) Work under the direction and guidance of the Gila County Election's staff and consultants.

   d) Attend planning meetings with County Election's staff and consultants.

   e) Attend presentation/hearing meetings and conduct interactive dialogue with the public for the purpose of providing information and gathering public input.

   f) Provide for reporting the outcome of public meetings. Outcome materials must be made available to the public. The official record shall be addressed to the Board of Supervisors and submitted to Election's staff for review and dissemination.

   g) Evaluate public input and redistricting proposals under the direction and guidance of Election's staff and consultants.

   h) Make formal presentations to the Board of Supervisors in conjunction with Election's staff and consultants.

i) Attend at least 2/3 of all planning and presentation/hearing meetings.

j) Abide by Arizona Open Meeting Law and conduct meetings open to the public with 72 or more hours public notice provided for each meeting. Abide by all other applicable Federal and State laws.

k) Conduct business in public meetings only when a quorum is present. Nine committee members, including the chair or vice-chair, constitute a quorum. Nine or more affirmative votes are required for any official action.

l) Present no less than two redistricting plans to the Board of Supervisors for consideration.

m) Serve from the date of appointment by the Gila County Board of Supervisors through the preclearance of a new district boundary plan by the United States Department of Justice. Once the preclearance letter has been received, the committee shall meet to present the letter of preclearance to the Board of Supervisors. At that point, the Committee will automatically be dissolved.

5. While not required to do so, the Committee may form small study groups from among the Committee Members. Any such study groups will also abide by the Arizona Open Meeting Law. Small study groups can be formed for the purpose of:

   a) Breaking out portions of the work to be performed by the Committee,

   b) Analyzing, studying, or evaluating public input including maps received from the public,

   c) Creating summaries of the public input,

   d) Reviewing evaluations and statistics developed by the redistricting consultants relative to the public input/maps received,

   e) Ranking ideas in order of importance, and

   f) Presenting the public input, their ranking of the public input, and other ideas to the full Redistricting Advisory Committee, the redistricting consultants and Gila County staff.

6. Resignation or Termination from Appointment:

   a) After having been served written notice, and provided with an opportunity for a response, a member of the Committee may be removed by the Board of Supervisors for failure to attend scheduled Committee planning meetings or presentation/hearing meetings, substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office.

b) Committee members who must resign should provide two-weeks notice in a written letter addressed to the Gila County Board of Supervisors and the Director, Gila County Division of Elections.

c) In the event a vacancy on the Committee occurs, a new name shall be presented to the Board of Supervisors for appointment by the same member of the Board of Supervisors who submitted the vacating member's nomination. The nominee shall be of the same political party or status as was the member who vacated the office at the time of his or her appointment.

d) In the event there is a vacancy of the chair or vice chair, the appointment of a new chair or vice chair shall be made by the remaining Committee members.

e) If the appointment of a replacement committee member or chair is not made within a reasonable time following the presentation of the nominees, the Board of Supervisors, or its designee, shall make the appointment striving for political balance and fairness.

f) Any newly appointed Committee member shall serve out the remainder of the original member's term.

GILA COUNTY REDISTRICTING ADVISORY COMMITTEE

CALL TO THE PUBLIC SPEAKER FORM

Thank you for attending today's Redistricting Advisory Committee Meeting

During the "Call to the Public" on today's agenda, the public may comment during regularly scheduled meetings of the Committee. The Chair will conduct a Call to the Public to accept comments from the public at the end of the meeting, although the Committee reserves the right to modify the order of any item on the agenda including the Call to the Public.

Citizens who wish to address the public body need not request permission in advance. In order for the record to properly reflect the speaker's name, address and subject matter, please complete the information below and submit it to the Committee.

Speakers will be limited to three (3) minutes each and the Committee reserves the right to limit the length of the Public Comment period.

Committee members may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to ARS §38-431.01(G), action taken as a result of public comment will be limited to directing staff to study the matter, responding to criticism, or scheduling the matter for further discussion and decision at a future date.

Date _____ Your Name _____

Your mailing address _____

Your e-mail address _____

Your phone number _____

Brief description of the subject to be addressed:

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