

Eastlick, Linda

From: Mac Feezor [mac_feezor@msn.com]
Sent: Tuesday, June 14, 2011 9:29 AM
To: Eastlick, Linda
Subject: Re: Additional Redistricting Information

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Linda,

I've gone back and read the info referenced by Bruce, and I still come back to the fact that someone in times past, created districts that packed the minorities in such a way that we cannot now realign anything in the supervisor districts without running afoul of a perceived "damage" to minority rights. It makes the entire public input process a moot point, and a waste of time and resources. The population balance is already within the requested 5%. (District 1 = 1.34% over, District 2 = 4% under, and District 3 = 2.66% over "ideal".)

In order to do ANY balancing, something has to change, however slightly. We should have some guidelines that says something like "keep changes under 5% (lower), and the upper limit is x% (stacking suspected)". Concern for minority rights begins at some level and can be safely ignored when the initial minority % is less than X. Telling people that nothing can be changed just upsets them without providing any possibility of positive input.

It gets worse with the College Districts...some of these HAVE to be changed, and any change in the Southern areas WILL affect minority concentrations.

District 1 = 8.87% over (951+)
District 2 = 5.81% over (623+)
District 3 = 4.55% under (488-)
District 4 = 16.3% under (1747-)
District 5 = 6.19% over (663+)

These district are so far out of balance that they must be changed. However, Districts 3-5 have significant minority populations. Any changes will decrease the concentration of minority voters. However, if we don't change them, we are ignoring the "one person, one vote" (a Constitutional requirement) in favor of a Voting Rights restriction (which, in my mind, should come AFTER keeping the Constitutional requirements met.)

Something has to give.

Regards,
Mac

From: Eastlick, Linda
Sent: Friday, June 10, 2011 11:47 AM
To: Mac Feezor
Subject: Additional Redistricting Information

Mac

Meant to send this to you yesterday. Got caught up in "stuff" . I am sure you know how that goes. Anyway, Bruce sent the following when I asked him to review your email. Hope it gives you some assistance.

Linda Eastlick, Director

Gila County Division of Elections

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Linda:

Not surprisingly, this question is more complicated than it seems.

The 10% one person, one vote variance by district should not be confused with the Voting Rights Act. The VRA does not contain a specific statistical threshold variance for minorities.

The 10% one person, one vote variance comes from federal court decisions. The *Larios v. Cox* decision called this 10% threshold into question. It is now considered advisable, in light of this case, to have variances below 5%, to withstand successfully any one person, one vote court challenges to a redistricting plan and to help with DOJ preclearance. Mr. Freezor can read about *Larios* and statistical variances at, *Larios v. Cox*, 300 F. Supp 2d 1320 (N.D. GA, 2004), aff'd, 542 U.S. 947 (2004).

Mr. Freezor can refer to VRA sections 2 and 5. However, he will find that the plain words of the statute do not address his specific question. Those specifics can be found in regulations, DOJ determinations and federal district appeals, and supreme Court decisions.

Concerning his question about the VRA forcing him to deal with American Indians and Hispanics as blocks, I am uncertain what he means. However, I will attempt a response.

Pursuant to the VRA, it is inadvisable to split an Indian reservation between two or more districts. Such a split can create a textbook example of retrogression, which violates Section 5, by effectively weakening Indians' ability to elect their candidates of choice, the key component of a retrogression analysis and determination. Such a split may also dilute Indian voting strength, violating VRA Section 2.

Pursuant to the VRA, it is inadvisable to divide communities by taking race and national origin into account if such divisions are discriminatory, i.e., weakening or eliminating minority voters' ability to elect their candidates of choice.

These are bedrock, long-established principles under the VRA as interpreted by various federal courts and DOJ.

I have pasted below DOJ's new Section 5 regulations about redistricting. The regulations speak to splitting minority populations and may be of value to Mr. Freezor.

§ 51.59 Redistricting plans.

(a) *Relevant factors.* In determining whether a submitted redistricting plan has a prohibited purpose or effect the Attorney General, in addition to the factors described above, will consider the following factors (among others):

- (1) The extent to which malapportioned districts deny or abridge the right to vote of minority citizens;
- (2) The extent to which minority voting strength is reduced by the proposed redistricting;
- (3) The extent to which minority concentrations are fragmented among different districts;
- (4) The extent to which minorities are over concentrated in one or more districts;
- (5) The extent to which available alternative plans satisfying the jurisdiction's legitimate governmental interests were considered;
- (6) The extent to which the plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries; and
- (7) The extent to which the plan is inconsistent with the jurisdiction's stated redistricting standards.

(b) *Discriminatory purpose.* A jurisdiction's failure to adopt the maximum possible number of majority minority districts may not be the sole basis for determining that a jurisdiction was motivated by a discriminatory

Please let me know if I can provide any additional information.

Sincerely,

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