135 Box 54 - JGR/Texas Redistricting – Roberts, John G.: Files
SERIES I: Subject File

THE WHITE HOUSE

WASHINGTON

March 5, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Correspondence Concerning Texas Redistricting Plan

Attached for your review and signature is a memorandum to William Bradford Reynolds requesting a draft response to a letter concerning several Texas redistricting plans submitted to the Civil Rights Division for pre-clearance in 1982 and 1983. The letter comes from State Representative Patricia Hill, who was involved in the redistricting process as an attorney and claims that the pre-clearance of the 1983 plan by the Justice Department is inconsistent with previous refusals to grant pre-clearance.

Attachment

THE WHITE HOUSE

WASHINGTON

March 6, 1984

MEMORANDUM FOR WILLIAM BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence Concerning Texas Redistricting Plan

Attached is a letter from Texas State Representative Patricia Hill that has been referred to me for response. Representative Hill writes about the various Texas redistricting plans submitted to the Civil Rights Division for pre-clearance in 1982 and 1983. As you will note, Ms. Hill has been involved in the redistricting process as an attorney for the plaintiffs challenging plans for the Texas House and Senate.

I would greatly appreciate a draft response to Ms. Hill's letter, for my signature, as soon as possible.

Many thanks.

Attachment
FFF:JGR:aea 3/6/84
cc: FFFielding/JGRoberts/Subj/Chron

ID # CU

ST043

JV

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

John

Name of Correspondent: Patricia Hill

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Congressional Redistricting Lawsuit in Texas

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CWHolland	ORIGINATOR	84/10/22			1 1
CWAT18	Referral Note: D	84/10/24			S 84/10/04
CS Bake	Referral Note: S	84/02/16	JB		A 84/02/16
	Referral Note:	1 1			1 1
	Referral Note:	1 1			1 1
	Referral Note:				

ACTION

DISPOSITION

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

THE WHITE HOUSE

WASHINGTON

April 25, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Texas Redistricting Plans

On January 24 Patricia Hill, a Texas state representative, wrote Mr. Baker to complain about the Justice Department's voting rights review of the Texas House, Senate, and Congressional redistricting. Texas is one of the states that must obtain pre-clearance under section 5 of the Voting Rights Act of any changes in its laws affecting voting, including redistrictings. Hill complained that the Department objected to all three proposed redistricting plans in 1982, but then pre-cleared essentially the same plans in 1983. Hill contends that the cleared plans discriminate against both minorities and Republicans.

On February 16, Baker sent an interim reply, advising Hill that he had referred her letter to you and that a "direct and more detailed response will be forthcoming." The letter was actually referred to us on Febuary 24. On March 6 we sent the letter to Brad Reynolds, for preparation of a reply for your signature. Reynolds has now submitted the requested draft, which reviews the dispute in a dispassionate manner. The proffered explanation for the apparent inconsistency between the 1982 objection and the 1983 clearance is two-fold: the 1983 plans contained critical changes from the 1982 plans, and more information was provided by the State with respect to the 1983 plans. Since the burden of proof in section 5 cases rests with the State - i.e., the Department must object to redistrictings until the State proves they will not have a discriminatory purpose or effect -- the clearance of a plan may hinge on the information provided by the State and, theoretically, the same plan could be blocked on the basis of one submission but cleared on the basis of a more detailed submission. That is, at least in part, what occurred in this case, although as noted there were also significant changes in the plans themselves.

I have edited the reply submitted by Reynolds for style and to remove language suggesting that you had reviewed and approved Justice's handling of the dispute. As revised the proposed reply simply provides Hill information about the matter without making any gratuitous judgments.

THE WHITE HOUSE

WASHINGTON

April 25, 1984

Dear Ms. Hill:

This is in further response to your letter to White House Chief of Staff James A. Baker, III, concerning the review by the Justice Department of the redistricting plans enacted by the Texas Legislature.

As you know, the Voting Rights Act imposes a burden on the State of Texas to demonstrate that redistricting plans do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or language minority status. The House and Senate plans, both enacted by the Legislative Redistricting Board (LRB), were submitted by the state for Section 5 preclearance on the basis of limited information and under a short timetable. As you note, the submission was accompanied by allegations that the plans discriminated against black and Mexican-American voters and, in the view of the Justice Department, the original submission did not rebut those allegations. Thus, given the burden of proof applicable in Section 5 proceedings, it was necessary for the Department to interpose an objection to the plans at that time. I enclose for your information a copy of the Section 5 objection letters dated January 25, 1982.

Following the Section 5 objection, the United States accepted the invitation from the Federal district court hearing Terrazas v. Clements, Civil Action No. 3-81-1946-R (N.D. Tex.), to participate as amicus curiae. In that role representatives of the Department reviewed the evidence of record that was presented by the parties. As a result of the additional information obtained, the Department concluded that in several areas where discrimination was alleged the plan was, in fact, nondiscriminatory. Accordingly, on March 5, 1982, the Attorney General informed the state that except as to the House districts in Bexar, Dallas and El Paso Counties and the Senate districts in Bexar and Harris Counties "the state has satisfied the burden of proof required by Section 5." A copy of the March 5, 1982, letter is enclosed.

The Terrazas court ordered an interim redistricting plan for use in the May 1982 primary election. The court's plan used the LRB plan with modifications to the House districts in Bexar and El Paso Counties.

In its 1983 session the Texas Legislature enacted the House plan used in the 1982 elections. The plan incorporated the court-ordered changes in Bexar and El Paso Counties; the House districts in Dallas were identical to those in the LRB plan which was presented to the Department in 1981. The state's 1983 submission seeking preclearance of the House plan contained information demonstrating that the court's modifications to the plan in the Bexar County and El Paso County areas remedied the previous concerns regarding those areas. The state also submitted new information to show that the configuration of the House districts in Dallas County did not have a discriminatory purpose and would not have a discriminatory effect. Upon a review of that information, along with the data provided previously, the Department determined that the state had satisfied its burden of proof and that the House plan was entitled to Section 5 preclearance.

As the result of negotiations between several of the parties in Terrazas, modifications were made to the LRB Senate plan. This modified plan initially was presented to the three-judge panel as a proposed settlement of the lawsuit, but the court required that the state first obtain Section 5 preclearance of the proposed plan. Upon submission, the Department received information concerning the modified plan from the state as well as from interested persons and organizations within the minority community. A review of the information led the Department to conclude that the Senate plan as modified did not have a discriminatory purpose or a discriminatory effect within the meaning of Section 5; the plan was accordingly precleared.

Subsequent to these actions, the Terrazas court conducted an evidentiary hearing on constitutional and Section 2 challenges to the House plan and concluded that the plan complied with the requirements of federal law. After finding that the Senate plan was "racially fair and equitable," the court ordered it into effect.

Finally, as you note in your letter, the Department, on September 27, 1983, granted Section 5 preclearance to the Congressional redistricting plan for the State of Texas (S.B. 480). The letter notifying the state of that decision sets forth the reasons for this conclusion, including an explanation of the plan's impact in Dallas County. A copy of that letter is enclosed for your information.

Your letter states that the actions of the Department of Justice in reviewing these plans "have had the further result of making the Justice Department the subject of great criticism by knowledgeable legal and political observers in Texas." Reapportionment decisions generally do create

considerable controversy, but the only role of the Department of Justice is to assure that the plans do not discriminate on the basis of race, color, or language minority status. The Section 5 responsibility is a particularly difficult one since the decision must be made on the basis of information supplied to the Department by the state and other interested parties. As this instance demonstrates, the quality and quantity of the information provided can affect the preclearance process.

You also should be advised that the three-judge court which heard the Terrazas lawsuit recently expressed its appreciation for the United States' participation as amicus and for what it termed the "splendid help which all the representatives of the Department of Justice rendered not only to the court but also to all the litigants."

I hope that this information is helpful to you; we appreciate your writing to inform us of your views.

Sincerely,

Orig. Signed by FFF

Fred F. Fielding
Counsel to the President

The Honorable Patricia Hill
Member of the House of Representatives
of the State of Texas
Austin, Texas 78769

Enclosures
FFF:JGR:aea 4/25/84
bcc: FFFielding/JGRoberts/Subj/Chron

ID # 208356 CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

John

Name of Correspondent: ~~William Bradford Reynolds~~ Patricia Wald

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: ~~Correspondence~~ Concerning Texas Redistricting Plans

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Code	Completion Date YY/MM/DD
CU HOU	ORIGINATOR	84/04/20			1 1
	Referral Note:	cont. corresp			
CU AT 18	D	84/04/24		S	84/05/04
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				

ACTION CODES:
- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:
- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

19 APR 1984

MEMORANDUM FOR: FRED F. FIELDING
Counsel to the President
The White House

FROM: Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

SUBJECT: Correspondence Concerning Texas Redistricting Plans

This is in response to your memorandum of March 6, 1984, in the above-captioned matter, requesting a draft response to correspondence from Texas State Representative Patricia Hill concerning various Texas redistricting plans submitted to the Civil Rights Division for preclearance in 1982 and 1983 under Section 5 of the Voting Rights Act. Please find attached a draft response for your signature to Representative Hill. If I may be of further assistance, please let me know.

19 APR 1984

MEMORANDUM FOR: FRED F. FIELDING
Counsel to the President
The White House

FROM: Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

SUBJECT: Correspondence Concerning Texas Redistricting Plans

This is in response to your memorandum of March 6, 1984, in the above-captioned matter, requesting a draft response to correspondence from Texas State Representative Patricia Hill concerning various Texas redistricting plans submitted to the Civil Rights Division for preclearance in 1982 and 1983 under Section 5 of the Voting Rights Act. Please find attached a draft response for your signature to Representative Hill. If I may be of further assistance, please let me know.

Dear Ms. Hill:

This is in reference to your letter of January 24, 1984, to James Baker, regarding the Attorney General's review under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, of the redistricting plans enacted by the Texas Legislature. At Mr. Baker's request, I have examined the circumstances of the Section 5 review of the redistricting plans and I write to inform you of the results of the review.

As you know, the Voting Rights Act imposes a burden on the State of Texas to demonstrate that the redistricting plans do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or language minority status. The house and senate plans, both enacted by the Legislative Redistricting Board [LRB], were submitted for Section 5 review in December 1981, and the state officials requested the Department of Justice to make the Section 5 decision on the basis of limited information and under a short timetable. As you note, the submission was accompanied by allegations that the plans discriminated against black and Mexican-American voters and the original submission did not rebut those allegations. Thus, given the burden of proof applicable in Section 5 proceedings, it was required that a Section 5 objection to the plans be interposed. I enclose for your information a copy of the Section 5 objection letters dated January 25, 1982.

Following the Section 5 objection, the United States accepted the invitation from the federal district court hearing Terrazas v. Clements, Civil Action No. 3-81-1946-R (N.D. Tex.), to participate as amicus curiae. In that role representatives of the Department reviewed the evidence of record that was presented by the parties. As a result of the information obtained, the Department concluded that in several areas where discrimination was alleged the plan was, in fact, nondiscriminatory. Accordingly, on March 5, 1982, the Attorney General informed the state that except as to the house districts in Bexar, Dallas and El Paso Counties and the senate districts in Bexar and Harris Counties "the state has satisfied the burden of proof required by Section 5". A copy of the March 5, 1982, letter is enclosed.

The Terrazas court ordered an interim redistricting plan for use in the May, 1982 primary election. The court's plan used the LRB plan with modifications to the house districts in Bexar and El Paso Counties.

In its 1983 session the Texas Legislature enacted the house plan used in the 1982 elections. The plan incorporated the court-ordered changes in Bexar and El Paso Counties; the house districts in Dallas were identical to those in the LRB plan which was presented to

the Attorney General in 1981. The state sought Section 5 preclearance of the house plan from the Attorney General. The state's 1983 submission contained information demonstrating that the court's modifications to the plan in the Bexar County and El Paso County areas remedied the Attorney General's concerns regarding those areas. The state also submitted new information to show that the configuration of the house districts in Dallas County did not have a discriminatory purpose and would not have a discriminatory effect. Upon a review of that information, along with the data which had been provided previously, the Attorney General determined that the state had satisfied its burden of proof and that the house plan was entitled to Section 5 preclearance.

As the result of negotiations between several of the parties in Terrazas, modifications were made to the LRB senate plan. This modified plan initially was presented to the three-judge panel as a proposed settlement of the lawsuit; but the court required that the state first obtain Section 5 preclearance of the proposed plan. Upon submission, the Attorney General received information concerning the modified plan from the state as well as from interested persons and organizations within the minority community. A review of the information led the Attorney General to conclude that the senate plan as modified did not have a discriminatory purpose or a discriminatory effect within the meaning of Section 5; thus the plan was precleared.

Subsequent to the Attorney General's actions, the Terrazas court conducted an evidentiary hearing on constitutional and Section 2 challenges to the house plan and concluded that the plan complied with the requirements of federal law. After finding that the senate plan was "racially fair and equitable", the court ordered it into effect.

Finally, as you noted in your letter, the Attorney General, on September 28, 1983, granted Section 5 preclearance to the congressional redistricting plan for the State of Texas (S.B. 480). The letter notifying the state of that decision sets forth the reasons for the Attorney General's conclusion, including an explanation of the plan's impact in Dallas County. A copy of that letter is enclosed for your information.

Your letter states that the actions of the Department of Justice in reviewing these plans "have had the further result of making the Justice Department the subject of great criticism by knowledgeable legal and political observers in Texas." We recognize that reapportionment decisions generally create controversy, but the Department of Justice's only role is to assure that the plans do not discriminate on the basis of race or language minority status. The Section 5 responsibility is a particularly difficult one since the decision must be made on the basis of information which the state and other interested parties supply voluntarily to the Department.

I have discovered no inconsistency in the actions of the Department; rather the Department merely required the state to satisfy the burden of proof required by Section 5 and when that burden had been satisfied the plans received Section 5 preclearance.

You also should be be advised that the three-judge court which heard the Terrazas lawsuit recently has expressed its appreciation for the United States' participation as amicus and for what it termed the "splendid help which all the representatives of the Department of Justice rendered not only to the court but also to all the litigants." In these circumstances I cannot agree that the actions of the Department were improper in any respect.

I hope that this information is helpful to you; we appreciate your writing to inform us of your views.

Sincerely,

FRED FIELDING
Counsel to the President

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D C 20530

T. 1/25/82
WBR:GWJ:PFH:RSB:bhq
166-012-3
D2634

25 JAN 1982

Honorable David Dean
Secretary of State
Elections Division
P. O. Box 12887
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to the Legislative Redistricting Board Plan Number 1 which provides for the redistricting of the Senate for the State of Texas submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on December 1, 1981.

We have given careful consideration to the information that you have supplied. In addition, we have examined comments and information provided by other interested persons. As you know, under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also, Procedures for the Administration of Section 5, 28 C.F.R. 51.39(e) (46 Fed. Reg. 878).

In this instance we have received a number of allegations that the plan discriminates against black and Mexican-American voters in certain parts of the state. In fact, your submission itself states:

> It has come to my attention that the submitted Plan may not comply with the Voting Rights Act in all respects. There are claims that under the Plan there is a retrogression in opportunities for minority representation. In my opinion several of these claims are meritorious.

Because of the number of questions which thus have been raised about the plan and because you have requested that we make a decision on this submission on the basis of the information now before us, we are unable to conclude that the state has satisfied its burden of demonstrating that the plan "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or [membership in a language minority group]." 42 U.S.C. 1973c. Accordingly, on behalf of the Attorney General, I must interpose an objection to the plan.

At the outset, we note that in the ten-year period since the 1970 Census the state's population has increased by 27.1 percent. A significant portion of that increase was experienced in the minority community. This is especially true for the Mexican-American population which increased 44.96 percent since 1970.

The senate districting plan, however, does not appear to reflect this increase in the voting strength of the minority community. The net result seems to be a plan in which minorities enjoy no significant gains even though their percentage of the population has increased and the demography of the state presents several areas for recognizing the increased potential of the minority community. While we recognize there is no obligation to maximize the political impact of a minority group, it has been alleged, and not adequately refuted, that the state's plan, as it affects Bexar and Harris Counties, unnecessarily fragments minority concentrations in such a manner as to dilute the voting strength of the minority communities.

For example, in Bexar County, existing District 19 is underpopulated according to the 1980 Census and thus requires additional persons to meet one person-one vote standards. The proposed plan for this area, however, removes a substantial number of Mexican Americans from this district and adds a larger number of Anglos. The effect of this method of drawing the boundaries for

proposed District 19 appears to be a dilution of Mexican-American voting strength. Regarding Harris County, we have received allegations that the senate districts unnecessarily fragment the minority community and the odd configurations of proposed Districts 6 and 13 lend support to that claim and raise substantial question as to whether the plan, as it affects Harris County, satisfies the requirements of Section 5.

Additionally, we have received allegations that the state used criteria for drawing senate districts in Harris County which differ from the criteria used in drawing senate districts in Dallas County. The claim is that in Harris County the state divided the minority communities among several districts so as to create districts in which minorities could have an "impact" even if they could not elect candidates of their choice. In Dallas County, the minority community apparently was treated as a "community of interest" and the plan seems to recognize the potential of that community to elect candidates of their choice to the senate. The state has presented no information to demonstrate why such divergent criteria were employed or to establish that the use of the seemingly inconsistent criteria does not have a discriminatory effect.

Since the state has failed to demonstrate that the plan is nondiscriminatory it is necessary to interpose an objection. We note, however, that the concerns that lead to this decision are based, in large part, on our being unable to reach the conclusion that the allegations of racial and ethnic discrimination have been sufficently refuted on the basis of the information presently before us. Thus, if the state can present evidence which satisfactorily addresses the issues that have been raised by the complaints referred to above, we would be willing to reconsider this objection pursuant to the applicable provisions of the Procedures for the Administration of Section 5. See, 28 C.F.R. §51.44. If you desire, our staff is also available to meet with you and other state officials to discuss these concerns.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these 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. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of this objection is to render the redistricting of the Texas Senate as authorized by the Legislative Redistricting Board's Plan Number 1 legally unenforceable.

If you have any questions concerning this letter, please feel free to call Carl Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Hon. Mark White
Attorney General
State of Texas

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D C 20530*

T. 1/26/82
WBR:GWJ:PFH:RSB:ca
166-012-3
D2634

25 JAN 1982

Honorable David Dean
Secretary of State
Elections Division
P. O. Box 12887
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to the Legislative Redistricting Board Plan Number 3 which provides for the redistricting of the House of Representatives for the State of Texas submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on December 1, 1981.

We have given careful consideration to the information that you have supplied. In addition, we have examined comments and information provided by other interested persons. As you know, under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also, Procedures for the Administration of Section 5, 28 C.F.R. 51.39(e) (46 Fed. Reg. 878).

In this instance we have received a number of allegations that the plan discriminates against black and Mexican-American voters in certain parts of the state. In fact, your submission itself states:

> It has come to my attention that the submitted Plan may not comply with the Voting Rights Act in all respects. There are claims that under the Plan there is a retrogression in opportunities for minority representation. In my opinion several of these claims are meritorious.

Because of the number of questions which thus have been raised about the plan and because you have requested that we make a decision on this submission on the basis of the information now before us, we are unable to conclude that the state has satisfied its burden of demonstrating that the plan "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or [membership in a language minority group]." 42 U.S.C. 1973c. Accordingly, on behalf of the Attorney General, I hereby interpose an objection to the plan.

At the outset, we note that in the ten-year period since the 1970 Census the state's population has increased by 27.1 percent. A significant portion of that increase was experienced in the minority community. This is especially true for the Mexican-American population which increased 44.96 percent since 1970.

The house districting plan, however, does not accurately reflect this increase in the voting strength of the minority community. The net result seems to be a plan in which minorities enjoy no significant gains even though their percentage of the population has increased and the demography of the state presents opportunities in several areas for recognizing the increased potential of the minority community. While we recognize there is no obligation to maximize the political impact of a minority group it has been alleged that the state's plan, as it affects several areas within the state, fragments minority concentrations in such a manner as to dilute the voting strength of the minority communities.

For example, we have received allegations that in Dallas County the state's plan fragments the Mexican-American community on the west side of the City of Dallas in such a manner as to prevent the creation of a district where Mexican Americans could elect a candidate of their choice. In addition, the sweep of proposed District 100 through the center of the City of Dallas is alleged to dilute the voting strength of Dallas' black community; the contention is that the use of more compactly drawn districts would result in the creation of an additional district in

which black voters would be able to elect a candidate of their choice. It is also alleged that the odd shapes of proposed Districts 142 in Harris County and proposed District 117 in Bexar County serve to dilute the voting strength of the minority communities in these counties.

Another allegation that seems to have some merit concerns the creation of proposed District 68 which consists of Webb, Maverick, Kinney, Val Verde, Terrell, Pecos, Brewster and Presido Counties. The existing district includes Zavala and Crockett Counties and the state's decision not to include Zavala and Crockett Counties in the proposed district significantly reduced the minority population percentage in the resulting new district. The state has not presented any evidence upon which we can reject the contention that the removal of the two counties was not done for the purpose of diluting minority voting strength.

Finally, it has been alleged that the house plan also adversely affects the minority populations in Lubbock and El Paso Counties. Proposed District 83 in Lubbock County (existing District 75B) has suffered a significant reduction in the minority population percentage. It is alleged that this reduction is detrimental to the continued viability of the district as one in which the minority community could elect candidates of their choice to office. Regarding El Paso County, we have received allegations that the proposed plan does not fairly reflect the voting strength of the Mexican-American community, which has increased significantly over the past ten years.

Since the state has failed to demonstrate that the plan is nondiscriminatory it is necessary to interpose an objection. We note, however, that the concerns that lead to this decision are based, in large part, on our not being able to reach the conclusion that the allegations of racial and ethnic discrimination have been sufficently refuted on the basis of the information presently before us. Thus, if the state can present evidence which satisfactorily addresses the issues that have been raised by the complaints referred to above, we would be willing to reconsider this objection pursuant to the applicable provisions of the Procedures for the Administration of Section 5. See, 28 C.F.R. §51.44. If you desire, our staff is also available to meet with you and other state officials to discuss these concerns.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these 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. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of this objection is to render the redistricting of the Texas House of Representatives as authorized by the Legislative Redistricting Board's Plan Number 3 legally unenforceable.

If you have any questions concerning this letter, please feel free to call Carl Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Hon. Mark White
Attorney General
State of Texas

166-012-3
D2364
WBR:GWJ:PFH:RSB:bhq

5 MAR 1982

Honorable David Dean
Secretary of State
Elections Division
P. O. Box 12887
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to your letter of February 9, 1982, regarding the objections interposed pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to the Legislature Redistricting Board's [LRB] Plans number 1 and 3. The objections to the plans providing for the redistricting of the Texas Senate and House of Representatives were interposed on January 25, 1982.

In the letters which informed you of the Attorney General's decision we noted that the decision was based on the state's failure to provide sufficient information for us to conclude that the proposed changes that affected certain areas of the state did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. At that time we invited the state to provide additional information regarding these areas which would enable the Attorney General to determine that the two redistricting plans did not have the proscribed purpose or effect.

On February 9, 1982, you requested that the Attorney General sever the submissions and grant Section 5 preclearance to those portions of the plans to which the Attorney General had not expressed any concern. On February 23, 1982, we informed you that we were not at liberty to sever the submissions in the manner suggested. Additionally, we noted that we were considering your letter as a request for reconsideration of the decision.

As you know, the United States has participated as amicus curiae, in Terrazas v. Clements, C.A. 3-81-1946-R (N.D. Tex.) the judicial challenge to the LRB plans, currently being heard by a three-judge panel, and has been able to review the record in that lawsuit. Furthermore, we have received additional information and comments from other interested persons. Based on our analysis of this additional information, we are now satisfied that in the following areas of the state the LRB plan for the House of Representatives does not have the purpose or effect of discriminating against racial and language minority voters: Harris County, District 83 (Lubbock County) and District 68 (Webb, Maverick Kinney, Val Verde, Terrell, Pecos, Brewster and Presido Counties).

In Harris County we had expressed concerns that the odd shape of the districts, especially proposed District 142, could have had the effect of fragmenting the minority community by combining potentially divergent portions of the minority community. It is our opinion that the record in Terrazas v. Clements, supra, demonstrates that such fragmentation is unlikely and that the minority communities in Harris County are viable voting units. Accordingly, we no longer have the concerns earlier expressed with regard to District 142.

Regarding the creation of District 68 we noted a reduction in the minority population percentage by the removal of Zavala and Crockett counties with significant Mexican-American population. On the basis of additional information, particularly the 1980 voting age population, we now conclude that the minority community in District 68 will continue to have a fair chance to elect candidates of their choice to office. In addition, we are now satisfied the realignment of Zavala and Crockett Counties--which at first appeared to us to be dilutive of minority voting

strength when we first focused only on District 68--in fact had the the purpose and the effect of enhancing the overall voting strength of the Mexican-American population in the Southwest Texas area.

In our January 25, 1982 letter, we noted that the minority population percentage in proposed District 83 (formerly District 75B) declined although the area experienced an increase in the minority population percentage. According to the information we have now received regarding the overall decline in the area's population it appears that the district fairly reflects the voting strength of the minority community.

As stated in our letter of February 23, 1982, we are not able to sever the submission as you requested or to withdraw portions of our objection to LRB plan 3. However, as a result of the conclusions described in this letter the objection remains in effect only because of the manner in which the House plan affects Dallas, El Paso and Bexar counties. Also the objection to the Senate plan (LRB 1) continues to remain in effect because of the manner in which the plan affects Bexar and Harris Counties. In all other respects we find that the state has satisfied the burden of proof required by Section 5, in its submission of the House and Senate plans.

As you may be aware, during the course of the proceedings in Terrazas v. Clements, supra, we advised the Court, at its request, of our preliminary view that some of the proposals advanced by the parties to that lawsuit appeared to address in a positive way certain of the concerns we continue to have with the House districts in Bexar, Dallas and El Paso Counties and the Senate districts in Bexar and Harris Counties. Whether or not any of these proposals would meet the preclearance requirements under Section 5

cannot, of course, be determined prior to its submission and a full analysis of the information provided for our review.

Because of the pendency of those proceedings and the Court's interest in this matter, I am taking the liberty of sending a copy of this letter to the Court and to all counsel of record.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Civil Rights Division

WBR:CWG:RSB:gml
DJ 166-012-3
H3860

Office of the Assistant Attorney General

Washington, D.C. 20530

September 27, 1983

Honorable John W. Fainter, Jr.
Secretary of State of Texas
Elections Division
P. O. Box 12887
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to the reapportionment of congressional districts (Senate Bill No. 480 (1983)) in the State of 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 July 29, 1983. Although we noted your request for expedited consideration, we have been unable to respond until this time.

S.B. 480 was passed following an objection by this office to certain limited aspects of the original plan, S.B. 1. Following that objection an interim plan was adopted by the Court in Upham, et al. v. Seamon, 536 F. Supp. 931 (1982) which addressed not only the two districts specified as objectionable by this office (Nos. 15 and 27), but also modified the plan in Dallas County changing the configuration of Districts 5 and 24 so that each contained approximately 30% minority concentrations rather than 12.1 and 63.8 per cent respectively, as adopted by the legislature. On appeal the Supreme Court found that S.B. 1 in the Dallas area "failed to meet the test of racial fairness for a court-ordered plan" but summarily reversed because the case presented no finding of a violation of the law or constitution that would permit the court to supplant the legislative judgments reflected in S.B. 1. The Supreme Court did, however, permit the District Court to decide whether the election schedule was so far advanced as to require the 1982 elections to be conducted under its modified plan in the Dallas area. See Upham v. Seamon, 456 U.S. 37 (1982). On remand the District Court concluded that the election should be conducted under its modified plan. See Upham, supra, 536 F. Supp. at 1030 (E.D. Tex.) (1982). The legislature subsequently met and in most respects adopted the court's interim plan as its own in S.B. 480.

In measuring whether S.B. 480 satisfies the requirements of the Voting Rights Act, we have carefully considered the above history and the Supreme Court's clear pronouncement in Upham, supra and elsewhere (see White v. Weiser, 412 U.S. 783 (1973); Wise v. Lipscomb, 437 U.S. 535 (1978)) that deference should be paid to legislative judgment absent "any finding of a constitutional or statutory violation" (Upham, supra at 40). The Texas legislature made such a judgment and one that was fully informed by the experience of conducting an election under the interim plan.

The question of whether minority voters are prejudiced by a plan in which they have a substantial proportion of the vote in two districts rather than a majority in one and minimal representation in the other is a complex one. It turns on an analysis of racial bloc voting, the extent minorities participate in political coalitions with majority race citizens and the purpose of the legislature in enacting the plan. In this case minority contacts are split about their view of the plan. Some argue that it affords them a "swing vote" in each district to elect favored candidates. Others argue that fairness demands one minority district with a clear majority.

Our analysis is that minorities in Dallas County have participated freely and sometimes decisively in congressional elections. They have participated in coalitions with others of similar persuasions. In fact, that appears to have occurred in last year's congressional election in Dallas. We have found no evidence that in selecting from among virtually infinite proper options the legislative judgment was infected by a racial or ethnic motive. Nor are we able to conclude that S.B. 480, when compared -- as the law requires (Beer v. United States, 425 U.S. 130 (1976)) -- with the Congressional districts drawn in 1973, is in any meaningful respect retrogressive. Accordingly, the state has met the burden imposed by the Voting Rights Act with respect to the Dallas districts.

Similarly, the other aspects of the plan satisfy the Act. Overall minorities now have six districts in which they will be able to elect candidates of their choice compared to five under the interim plan and S.B. 1. Our objection to the configuration of Districts 15 and 27 has also been resolved by S.B. 480.

Accordingly, the Attorney General does not interpose any objection to the plan here under submission. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division