IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARCELINO CORREA,
Plaintiff,

vs.

MEDINA COUNTY UNDERGROUND WATER CONSERVATION DISTRICT, a elected body organized under the laws of the State of Texas, et al.
Defendants.

CIVIL ACTION NO. SA 94-CA 0607

ORDER

This is a suit brought under the Federal Voting Rights Act of 1965 (as amended) 42 U.S.C. 1973 and the Federal Constitution. The Medina County Underground Water Conservation District along with its board of directors are the defendants. The plaintiff Marcelino Correa is a resident of and registered voter in the Medina County Underground Water Conservation District. The Medina County Underground Water Conservation District is coterminous with Medina County. All persons who are registered and otherwise qualified to vote in Medina County are qualified to vote in the Medina County Underground Water Conservation District elections.

After the filing of the Complaint, the defendant Fred Wells filed an answer admitting substantially all of the allegations of the plaintiff and moved to be realigned as a party plaintiff.

The plaintiff has complained that the holding of elections on the January uniform election date has the effect of reducing turn-out of minority voters. As a remedy, plaintiff has asked that the

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Court order the defendants to hold all future elections in conjunction with the November general election date at the same polling places and on the same ballot. Plaintiff alleges that the date on which an election is held has a direct impact on turn-out of the minority population and that the normal turn-out is much higher in the November general election than the other uniform state election dates. Plaintiff further argues that holding the elections on dates which are known to result in lowered minority turn-out violates the Fourteenth Amendment to the U.S. Constitution as well as the various statutes which have been enacted to enforce it including 41 U.S.C. Sec. 1983 and Section 2 of the Voting Rights Act of 1965 (as amended) 42. U.S.C. Sec. 1972. The so called "Section 2" prohibits election systems which make it more difficult for protected groups to participate in the political process and to elect the representatives of their choice.

The Medina County Underground Water Conservation District is organized under Section 52 of the Texas Water Code. Relevant portions of the Water Code relating to the issue before the Court provide as follows:

> Sec. 52.111 **Vacancies on Board**
> (a) An election in the district shall be held on an authorized uniform election date as provided by the election code.
> (b) Each election shall be held in accordance with the Election Code.

The Election Code designates the "uniform election dates" as:

> Sec. 41.001 **Uniform Election Dates**
> (a) Except as otherwise provided by this subchapter, each general or special election in this state shall be held on one of the following dates:
> (1) the third Saturday in January;
> (2) the first Saturday in May;
> (3) the second Saturday in August; or
> (4) the first Tuesday after the first Monday in November.
> (b) Subdivision (a) does not apply to:
> (5) an election held under an order of a court or other tribunal.

> Sec. 41.003 **Authorized November Elections in Even Numbered Year**
> Only the following elections may be held on the date of the general election for state and county officers:
> (1) a general or special election for officers of the federal, state, or county government;
> (2) a general or special election of officers of a general law city if the city's governing body determines that the religious beliefs of more than 50 percent of the registered voters of the city prohibit voting on Saturday;
> (3) a general or special election of officers of a home rule city with a population of under 30,000, if before 1975 the general election of the city's officers was held on that date in even numbered years;
> (4) an election on a proposed amendment to the state constitution or on another statewide measure submitted by the legislature;
> (5) a countywide election on a measure that is ordered by a county authority and affects county government;
> (6) an election on a measure submitted by order of an authority of a city described in Subdivision (2) or (3); and
> (7) a commissioners' election of a self-liquidating navigation district held under Section 63.0895 , Water Code.

After the filing of this complaint, the directors of the Medina County Underground Water Conservation District held a meeting and voted to move the election date to November to be held

in conjunction with the regularly scheduled November General election in Medina County. Thereafter, the change in election dates was submitted to the Department of Justice for preclearance under Section 5 of the Federal Voting Rights Act of 1965 (as amended) 42 U.S.C. 1973.

The parties stipulate and the Court finds that all of the population of the Medina County Underground Water Conservation District has a direct and intimate personal interest in the functioning of the district. The conservation of the water supply in the area is the lynch pin for not only the economic development but of life itself. Clearly, the right to vote on something which is this important must be one of those rights protected by the Fourteenth Amendment. In this regard, it is significant that the legislature took no action to limit the persons who were eligible to vote in or be elected to the board of directors of the Medina County Underground Water Conservation District.

The Fourteenth Amendment and 42 U.S.C. Sec. 1973

The Intent or Foreseeability Test

Plaintiff concedes that state law authorizes a water district such as the one before the Court to set its elections at any of the state authorized uniform election dates. However, plaintiff contends that when there is evidence that the choice of election dates has a negative impact on minority voting rights, it must be weighed against the basic constitutional right to vote and the special protection which the Congress has directed Federal Courts

to afford minority voters under the Fourteenth Amendment and the statutes which have been passed to enforce it. Unless there is a way for both to coexist, the right to vote and to have that vote counted equally must be protected by this Court. Although the Fourteenth Amendment and 42 U.S.C. Sec. 1983 require that an intent to discriminate be shown, plaintiff contends that intent exists where it is shown that the defendants were aware of the disproportionate impact of the election date and did nothing to change it. Rodgers v. Lodge, 458 U.S. 613 (1982)

Section 2 of the Federal Voting Rights Act
The Effect or Results Standard

Even if the Fourteenth Amendment does not require that the election date be moved to November, then plaintiff argues that Section 2 of the Voting Rights Act does. A plaintiff in a case such as this will be successful under Section 2 of the Voting Rights Act if he is able to show that the strict adherence to the state law "results" in making it more difficult for minority group members to elect representatives of their choice. Thornburg v. Gingles, 478 U.S. 30, 106 S. Ct. 2752, 2763 ff (1986). Stated another way, plaintiff wins if he is able to show that, irrespective of intent, and when assessed in "the totality of circumstances" the "result" of the election practice or procedure is "to cancel out **or minimize** the voting strength of racial groups." [emphasis added] White v. Regester, 412 U.S. 755, 765 (1972), Thornburg v. Gingles, (supra). This burden was

specifically simplified and liberalized by Congress in 1982:

> Thirty pages of legislative history make eminently clear that Congress did not want the high burden for discriminatory intent to govern violations under Section 2. [footnote omitted]

Dillard v. Crenshaw County, Ala, 831 F. 2d 246, 249 (11th Cir. 1987).

The Senate Judiciary Report explains that:

> The amendment to the language of Section 2 is designed to make clear that plaintiffs need not prove a discriminatory purpose in the adoption or maintenance of the challenged system or practice in order to establish a violation. Plaintiffs must either prove intent, or alternatively, must show that the challenged system, in the context of all the circumstances in the jurisdiction in question, results in minorities being denied equal access to the political process.

S.Rep. No. 97-417 at 205

> [T]he amended [Section 2] liberalized the statutory vote dilution claim in two fundamental ways. It removed any necessity that discriminatory intent be proven, leaving only the necessity to show dilutive effect traceable to the challenged electoral mechanism.

Gingles v. Edmisten, 590 F. Supp. 345, 352 (E.D. North Carolina 1984) affirmed in relevant part sub nom Thornburg v. Gingles, 106 S. Ct. 2572 (1986).

In this regard it has been said that "Amended Section 2 embodies a congressional purpose to remove all vestiges of minority race vote dilution perpetuated on or after the amendment's effective date by state or local electoral mechanisms." Id. 590 F. Supp. at 355.

Each of the theories presented by the plaintiff presents the Equal Protection question in a slightly different light. The Fifth Circuit set the two areas in context when it observed:

> Inherent in the concept of fair representation are two propositions: first, that... one man's vote should equal another man's vote as nearly as practicable [footnotes omitted]; and second, that assuming substantial equality, the schemes must not operate to minimize or cancel out

> the voting strengths of racial elements of the voting population.

Zimmer v. McKeithen, 485 F 2d 1297, 1303 (5th Cir. 1973)

While the concepts which underlie these two sorts of vote dilution are not easy to put in a nutshell, they are founded upon the theory that "the right to vote may be denied by dilution or debasement just as effectively as wholly prohibiting the franchise." City of Port Arthur v. U.S., 459 U.S. 159, 165, 103 S. Ct. 530, 534, 74 L. Ed. 2d 334 (1982).

The Senate Report, considering the adoption of Section 2 of the Voting Rights Act, sets out several areas of inquiry to be used in answering the "right question" in Section 2 cases. LULAC v. Midland I.S.D., 812 F 2d 1494, 1497-1498 (5th Cir. 1987). These include the history of official discrimination in the state and the jurisdiction; the existence of racially polarized voting; the effects of other voting procedures which tend to enhance the opportunity for discrimination against the minority group; the current effects of past discrimination; the exclusion of members of the minority group from the candidate slating process; and the extent to which minority candidates have been successful in being elected. However, the Senate Committee was careful to stress that:

> [T]here is no requirement that any particular number of factors be proved, or that the majority of them point in one way or the other." S.Rep. at 29, U.S. Code Cong. & Admin. News 1982 p 207. Rather the Committee determined that "the question of whether the political processes are equally open depends upon a searching practical evaluation of the 'past and present reality.'" Id. at 30,

U.S. Code Cong. & Admin News 1982 p 208. (footnote omitted), and on a "functional" view of the political process. Id. at 30, n. 120, U.S. Code Cong. & Admin News 1982, p 208.

Thornburg v. Gingles, (supra) 478 U.S. at 45, 106 S. Ct. at 2764. 57.

The Fifth Circuit has guided a District Court's consideration of the so called "Senate factors" in a case such as this. LULAC v. Midland I.S.D., 812 F. 2d 1494, 1497-98 (5th Cir. 1987). Special attention should be directed to:

1. the extent of any official history of discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or to otherwise participate in the democratic process.

2. the extent to which voting in the state or political subdivision is racially polarized.

3. the extent to which the state or political subdivision has used unusually large districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group.

4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process.

5. the extent to which the members of the minority group bear the effects of discrimination in such areas as education, employment and health which hinders their ability to participate effectively in the political process.

6. whether political campaigns have been characterized by overt or subtle racial appeals.

7. the extent to which the minority group have been elected to public office in the jurisdiction.

The Court will consider each of these elements and their application to this case.

1. The extent of any official history of discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or to otherwise participate in the democratic process.

Medina County has both shared and actively participated in the state's history of discrimination against Blacks and Mexican Americans. [1]/ see generally Graves v. Barnes, 343 F. Supp. 704,

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[1]/ For example these historic problems have included the white primary Smith v. Allwright, 321 U.S. 649; the poll tax United States v. Texas, 252 F. Supp. 234 (W.D.Tex. 1966) aff'd 384 U.S. 155 (1966); excessive restrictions on voter registration Gonzalez v. Stephens, 427 S.W. 2d 694 (Tex. Civ. App. Corpus Christi 1968); an annual voter registration system held to be more restrictive that the poll tax which it replaced Beare v. Smith, 321 Fed. Supp. 1100 (S. D. Tex. 1971) aff'd sub nom Beare v. Briscoe, 498 F. 2d 244 (5th Cir. 1974); an absolute prohibition on the use of interpreters by non-English speaking voters Garza v. Smith, 320 F. Supp. 131 (W.D. Tex. 1970; and unconstitutionally high candidate filing fees Carter v. Dies, 321 F. Supp. 1358 (N.D. Tex. 1970) aff'd sub nom. Bullock v. Carter, 405 U.S. 134 (5th Cir. 1973) see also Duncantell v. City of Houston, 333 F. Supp. 973 (S.D. Tex. 1971). Mexican American children were segregated on the basis of ethnicity and forced to attend "Mexican" of "Latin American Schools" even though no state statute required such segregation. See United States v. Texas, 342 F. Supp. 24 (E.D. Tex. 1971); Cisneros v. Corpus Christi I.S.D., 324 F. Supp. 599 (S.D. Tex. 1970); Independent School District v. Salvatierra, 33 S.W. 2d 790 (Tex. Civ. App. San Antonio) cert. denied 284 U.S. 580 (1931), Delgado v. Bastrop I.S.D., Civil Action No. 388 (Western District of Texas Austin Div. June 15, 1948), Perez v. Sonora I.S.D., Civil Action No. 6-224 (N.D. Tex. Nov. 5, 1970) (unreported); Hernandez v. Driscoll Consol. I.S.D., 2 Race Rel. L. Rept. 329 (S.D. Tex. 1957), Chapa v. Odem I.S.D., Civil Action No. 66-C-92 (S.D. Tex. July 28, 1967), Mexican Americans were excluded from participation on juries Hernandez v. State of Texas, 347 U.S. 475 (1954), Muniz v. Beto, 434 F. 2d 697 (5th Cir. 1970), Rodriguez v. Brown, 437 F. 2d 34 (5th Cir. 1971), Puente v. Crystal City, Civil Action No DR-70-CA-4 (W.D. Tex. April 3, 1974), Juarez v. State, 102 Tex. Crim. 297, 2777 S.W. 1091) (1925).

725 (W.D. Tex. 1973) (three-judge) aff'd in relevant part sub nom. White v. Register, 412 U.S. 755 (1973).

2. The extent to which voting in the state or political subdivision is racially polarized.

The parties agree that elections in Medina County as elsewhere in Texas, are polarized along ethnic lines.

3. The extent to which the state or political subdivision has used unusually large districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group.

Elections in the Medina County Underground Water Conservation District feature many of the voting practices which have been identified by federal courts as making it more difficult for minority voters to participate in the political process and to elect the representatives of their choice. Prime among these is holding the elections at a time and in places which can be expected to result in lowered minority turn-out. In this regard, the parties stipulate that there is a significant difference in the Mexican American and Anglo or White turn-out rates in the area comprising the Medina County Underground Water Conservation District.

4. If there is a candidate slating process, whether the members of the minority group have been denied access to that process.

This part of the test asks whether there is a slating group and if so, do Mexican Americans have access to it. [2]/ Plaintiff does not lose anything if there is no slating group. Rather, this test is placed in the formula to insure that District Courts use different and special tests to analyze the effects of slating groups which has the power to virtually control elections. In most cases, there may be various organizations which endorse candidates but it is unusual to find a group which is so powerful that a which it endorses is consistently successful over long periods of time. See e.g. U.S. v. Dallas County Alabama Commissioners, 739 F. 2d 1529, 1539 (11th Cir. 1984), United States v. Marengo County, 731

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[2]/ This slating group gloss grows out of the Dallas County situation in White v. Register where the Dallas Committee for Responsible Government (DCRG) had a virtual lock on picking successful candidates. This was due in part to the fact that Dallas elected eighteen state representatives at large in a county of more than 1.3 million persons. None of the state's witnesses, even the Dallas County Democratic Chairman, could name all of the representatives from Dallas. As a result, the evidence indicated, people relied in large part upon the slating of the well respected businessmen who made up the D.C.R.G. The Supreme Court found that D.C.R.G. "a white-dominated organization [had] effective control of Democratic Party Candidate slating." White v. Register, (supra) 412 U.S. at 766-67. Since, with only one exception, only Democratic candidates were elected to the legislature from Dallas County, the real election contest in Dallas took place when candidates attempted to obtain slating from the D.C.R.G. Accordingly, the Court inquired in to whether minority residents of Dallas County had real access to this "white-dominated" slating process.

This is much like the "Jaybird Primary" considered by the U.S. Supreme Court in Terry v. Adams, 345 U.S. 461 (19530 in which the "Jaybird Democratic Club" met and held a pre-primary nomination process in which Black residents were not allowed to participate.

F. 2d 1546, 1569 (11th Cir. 1984). This is particularly true in the case of an election unit such as the Medina County Underground Water Conservation District which has been in existence for only a few years.

5. The extent to which the members of the minority group bear the effects of discrimination in such areas as education, employment and health which hinders their ability to participate effectively in the political process.

The social and economic situation of Mexican Americans in Medina County is an excellent example of the current effects of past discrimination. The parties agree that the 1990 Census of Population indicates that Mexican Americans fare substantially less well than the Anglo or White population on all normally used indices of social and economic well being.

The economic picture for three county area is confirmed by the 1987 data available from the Texas Employment Commission which found that the unemployment rate for Hispanics is twice that for Anglo residents.

Courts have looked to this current economic and social situation for three purposes:

> This lower socio-economic status gives rise to special group interests centered upon those factors. At the same time, it operates to hinder the group's ability to participate in the political process and to elect representatives of its choice as a means of seeking governmental awareness of and attention to those interests.

Gingles v. Edmisten, 590 F. Supp. 345, 363 (E.D. North Carolina 1984) affirmed in relevant part sub nom Thornburg v. Gingles, 478 U.S. 30, 106 S. Ct. 2572 (1986).

It is also well established that a plaintiff is not required to show a "causal nexus between their relatively depressed socio-economic status and a lessening of their opportunities to participate in the political process." Id. at n. 23. see also S.Rep. No. 97-417 n. 114. As the Fifth Circuit has stressed:

> The Supreme Court and this Court have recognized that disproportionate educational, employment and living conditions tend to operate to deny access to political life. [matter omitted] It is not necessary in any case that a minority prove ... that these economic and education[al] factors have "significant effect" on political access.... Inequality of access is an inference which flows from the existence on economic and educational inequalities.

Kirksey v. Board of Supervisors, 554 F. 2d 139, 145 (5th Cir.) cert. denied, 434 U.S. 968 (1977).

Stated another way, the Fifth Circuit has held that where there is clear evidence of socioeconomic or political disadvantage, the burden is not on the plaintiffs to prove that this disadvantage is causing reduced political participation, but rather on those who deny the causal nexus to show that the actual cause is something else. Cross v. Baxter, 604 F. 2d 875, 881-882 (5th Cir. 1979), Kirksey, (supra) 554 F. 2d at 144-46; Zimmer, (supra) 485 F. 2d at 1306.

6. Whether political campaigns have been characterized by overt or subtle racial appeals.

This is another gloss which seems to have grown out of the Dallas County portion of White v. Register (supra). In that case, the Court found that, the Dallas Committee for Responsible Government "D.C.R.G." (a consistently successful slating group) had

utilized racial tactics to identify and defeat Black candidates who it had not slated. It has become increasingly rare for a District Court to identify this element. See e.g. United States v. Dallas County Alabama, 739 F. 2d 1529, 1539 (11th Cir. 1984). See also United States v. Maringo County, 731 F. 2d 1546, 1571 (5th Cir. 1984).

Since Blacks have surnames which are usually not racially identifiable, it is was necessary in a County the size of Dallas to identify which candidates were Black to effectuate the racial prejudice of the White Community. No similar evidence was produced in Bexar County portion of White where, as here, the minority candidates had all been Mexican Americans who are self identified by their surnames.

7. The extent to which the minority group have been elected to public office in the jurisdiction.

There are currently no Mexican Americans serving on the Board of Directors of the Medina County Underground Water Conservation District.

Other Factors

In the matter before this Court, the plaintiff does not have a burden to demonstrate poor performance [3]/ on the part of the

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[3]/ In the case of unresponsiveness or poor performance, the Senate Report on Section 2 of the Voting Rights Act expressly disapproves of the view that unresponsiveness was an essential element of a voting dilution claim and stated moreover, that a showing of responsiveness did not negate plaintiff's claim. S.Rep. No. 417 at 29 n. 116, 1982 U.S. Code Cong. & Ad. News at

directors. This is particularly true where an Underground Water Conservation District such as this one has been in existence for only a few years. Nor does a plaintiff in a Section 2 case have a responsibility to show that there is tenuousness in the state policy underlying choice of election dates. Although this factor has been found by courts to be important when applying the Constitutional intent rather that the Section 2 results test. United States v. Marengo County, (supra) 731 F. 2d at 1571. It centers on the question of what neutral justifications can the defendants offer for the maintenance of the system. Id. The question of policy:

> is less important under the results test: "even a consistently applied neutral policy would not negate a plaintiff's showing through other factors that the challenged practice denies minorities fair access to the process." 1982 Senate Report at 29 n 117, U.S. Code Cong. & Admin. News 1982, p. 207, n 117.

Id.

The Gingles Test

While the factors listed in the Senate report may be relevant to a claim of vote dilution, the Supreme Court has held that "unless there is a conjunction of the following circumstances, an election practice or procedure will generally not impede the ability of minority voters to elect representatives of their choice. [footnote omitted] Thornburg v. Gingles, (supra) 478 U.S.

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207 n. 116. This statement would seem to change the suggestion of the Supreme Court in Lodge v. Buxton, 639 F. 2d 1358, 1375 (5th Cir. 1981) aff'd sub nom Rodgers v. Lodge, 458 U.S. 613 (1982).

30 at 48-50, 106 S.Ct. at 2766. Stated succinctly, a block voting majority must **usually** be able to defeat candidates supported by a politically cohesive, geographically insular minority group. [citations omitted] Cf. Bolden, 446 U.S. at 105, n. 3, 100 S.Ct., at 1520, n. 3 (Marshall J., dissenting) ("It is obvious that the greater the degree to which the electoral minority is homogeneous and insular and the greater the degree that block voting occurs along majority-minority lines, the greater will be the extent to which the minority's voting power is diluted by" a discriminatory election practice). Thornburg v. Gingles, (supra) 478 U.S. 30 at 48-50, 106 S.Ct. at 2766.

"First, the minority group must be able to demonstrate that it is large and geographically compact. [citations and matter omitted]. Second the minority group must show that it is politically cohesive. [citations and matter omitted] Third, the minority group must be able to demonstrate that the white or [Anglo] majority votes sufficiently as a block to enable it--in the absence of special circumstances, such as the minority candidate running unopposed usually to defeat the minority's preferred candidate. [citations omitted] In establishing this last circumstance, the minority group demonstrates that submergence in a white [or Anglo] multimember district impedes its ability to elect its chosen representatives. Thornburg v. Gingles, (supra) 478 U.S. at 50, 51, 106 S.Ct. at 2766-67.

As to the first of these three tests, the parties have stipulated and the Court finds as a fact that the Mexican American population in Medina County is large and compact.

As to the second of these three tests, the parties have stipulated and the Court finds as a fact that elections in Medina County seem to have results which closely follow the ethnic make up of the electorate.

As to the last of these three tests, the parties have stipulated and the Court finds as a fact that "in most instances, special circumstances such as incumbency and lack of opposition rather than a diminution in... [Anglo] bloc voting, [has] accounted for [Mexican American] candidates' success" in Medina County. Thornburg v. Gingles, (supra) 106 S.Ct. at 2768-69.

In this regard "the language of Section 2 and its legislative history plainly demonstrate that proof that some minority candidates have been elected does not foreclose a Section 2 claim." Thornburg v. Gingles, (supra) 106 S.Ct. at 2779-80. By the same token, it is well established that "the fact that racially polarized voting is not present in one or a few individual elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting." Thornburg v. Gingles, (supra) 106 S.Ct. at 2768-69.

As the Supreme Court has noted:

> Where [a challenged election practice] works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits minority voters.

Thornburg v. Gingles, 478 U.S. 30 at 76.

Both the Fifth Circuit and the Supreme Court have directed District Courts consider cases such as this by looking at the real functioning of the political system. Thornburg v. Gingles, 478 U.S. at 30. ("a searching practical evaluation of the past and present reality and a functional view of the political process.") In doing so, the Court is assisted by the fact that the defendants do not contest the claims by the plaintiff that the January date of the election has had the effect of making it more difficult for Mexican Americans to participate in the political processes and to elect the representatives of their choice.

CONCLUSIONS OF LAW

Section 2

1. "Subsection 2 (a) of the [Voting Rights Act] prohibits all states and political subdivisions from imposing **any** voting qualifications or prerequisites to voting, or any standards, practices, or procedures which result in the denial or abridgement of the right to vote of any citizen who is a member of a protected class of racial and language minorities. Section 2 (b) establishes that Section 2 has been violated where the 'totality of the

circumstances' reveal that 'the political processes leading to nomination or election... are not equally open to participation by members of a [protected class]... in that its members have less opportunity to ... to elect representatives of their choice.'" Thornburg v. Gingles, 478 U.S. 30, 43, 106 S.Ct. 2752, 2762 (1986)

2. "While explaining that '[t]he extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered' in evaluating an alleged violation, subsection 2(b) cautions that 'nothing in [section 2] establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.'" Thornburg v. Gingles, (supra) 470 U.S. 30, 43, 106 S.Ct. at 2762.

3. "The Senate Report which accompanied the 1982 amendments [to the Voting Rights Act] elaborates on the nature of Section 2 violations and on the proof required to establish these violations. [footnote omitted]. First and foremost, the report rejects the position of the plurality in Mobile v. Bolden, 446 U.S. 55, 100 S. Ct. 1490 (1980) which required proof that the contested electoral practice or mechanism was adopted or maintained with the intent to discriminate against minority voters. [footnote omitted]. See, e.g., S. Rep. 2, 15-16, 27. The intent test was repudiated for three principal reasons--it is 'unnecessarily divisive because it involves charges of racism on the part of individual officials or

entire communities,' it places an 'inordinately difficult' burden of proof on plaintiffs, and it 'asks the wrong question.' id., at 36, U.S. Code Cong. & Admin.News 1982, p. 214. The 'right' question as the report emphasizes repeatedly, is whether 'as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice.'" [footnote omitted]. id., at 28, U.S.Code Cong. & Admin.News 1982, p 206. See also id., at 2,27,29, n. 118, 36. Thornburg v. Gingles, (supra) 470 U.S. 30 at 43, 106 S.Ct. at 2762.

4. "In order to answer this question, a court must assess the impact of the contested structure or practice on minority electoral opportunities 'on the basis of objective factors.' id., at 27, U.S.Code Cong. & Admin.News 1982, p.205. The Senate Report specifies factors which typically may be relevant to a Section 2 claim: the history of voting related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or procedures which tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts... and [devices which limit the effectiveness of single shot voting], [matter omitted] the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health,

which hinder their ability to participate effectively in the political processes; [matter omitted] and the extent to which members of a minority group have been elected to public office in the jurisdiction. S.Rep. 28-29. The Report notes also notes that evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group and that the policy underlying the State's or political subdivision's use of the contested practice or structure is tenuous may have probative value. S.Rep. 29. The Report stresses, however, that this list of typical factors is neither comprehensive nor exclusive. [matter omitted] Furthermore, the Senate Committee observed that 'there is no requirement that any particular number of factors be proved, or that the majority of them point one way or the other.' id., at 29, U.S.Code Cong & Admin.News 1982, p. 207. Rather, the Committee determined that 'the question whether the political processes are equally open depends upon a searching practical evaluation of the past and present reality.' id. at 30, U.S. Code Cong & Admin.News 1982, p.208. and on a 'functional' view of the political process. id. at 30, n. 120, U.S. Code Cong. & AdminNews 1982, p. 208." Thornburg v. Gingles, (supra) 478 U.S. at 44-45, 106 S.Ct. at 2763-64.

5. The plaintiff contends that the use by the defendants of a January election date has the effect of diluting the vote of Mexican American residents of the district by discouraging its use. This "impair[s] their ability to elect representatives of their

choice. U.S. Code Cong. & AdminNews 1982, p. 208." Thornburg v. Gingles, (supra) 470 U.S. 30 at 46, 106 S.Ct. at 2764.

6. The essence of the plaintiff's claims under Section 2 of the Voting Rights Act is that the election practice complained of interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by Mexican American and Anglo voters to elect their preferred representatives.

7. After consideration of the Gingles test and the so called "Senate" or Zimmer factors, the Court finds as a matter of fact and law that the use of a January election date makes it appreciably more difficult for Mexican Americans living there "to participate in the political process and to elect representatives of their choice." See e.g., SRep. 2, 27, 28, 29. n. 118, 36.

8. Having found the January election date amounts to a violation of Section 2 of the Voting Rights Act, the Court has no necessity to determine whether the date of the election also violates the plaintiff's rights under 42 U.S.C. Section 1983 and the Fourteenth and Fifteenth Amendments.

Remedy

The parties agree and the Court Orders that beginning in November of 1994 all elections for the positions of director of the Medina County Underground Water Conservation District be held in

conjunction with the regularly scheduled Medina County November general elections and that all candidates for the position of director appear on the same ballot used in the general election. The defendants and all of those acting in conjunction with them as well as all those having notice of this Order are hereby enjoined to utilize the same polling places for absentee, in person early voting and the voting on election date and to insure that all qualified candidates for the Medina County Underground Water District elections appear on the same general election ballot.

The parties have indicated that a potential problem in the joint election process has been identified by the County election officials. This is that the time provided in the statute for the filing, qualification and certification of the candidates for director position in the Water District may result in a delay in the normal process followed by the County for the printing and mailing of absentee ballots. Although the parties report that this matter has been successfully dealt with for this election, the potential for the interruption of the normal electoral functions is real. As a result, the Court further orders that for the elections to be held in 1996 and thereafter, the process for candidate filing, the qualification of declared write in candidates and certification of candidates to the County Clerk for placement on the November ballot be completed sufficiently in advance of the election to insure that the consolidation of the elections ordered by the Court will result in no delay in the mailing of the printing

and mailing of absentee ballots. Based on the results of the 1994 election, the parties are directed to determine if it is necessary for the Court to enter any further orders for the implementation of this remedy. On or before December 15, 1994, the parties are directed to file any proposed amended order or to inform the Court that it is not necessary.

Preclearance

It is apparent that the procedures adopted in this and any subsequently issued amended order requires preclearance under the provisions of Section 5 of the Voting Rights Act of 1965 (as amended) 42 U.S.C. Sec. 1973. The Court is aware that the Department of Justice has precleared the change in the election dates and the joint conduct of the elections. The Court will retain jurisdiction pending the exhaustion of the preclearance process. The parties are directed to work together to accomplish this as quickly as possible and to notify the Court of any action by the Department of Justice.

Attorneys' Fees

The Court finds that this case is appropriate for an award of attorneys' fees. The parties have informed the Court that Counsel for the plaintiffs have been awarded fees by this and other courts in the range of $250.00 per hour and that an award of $75.00 per hour would be reasonable for an experienced paralegal. The parties

have indicated that this issue will be easily resolved and thus the Court will not issue any further order.

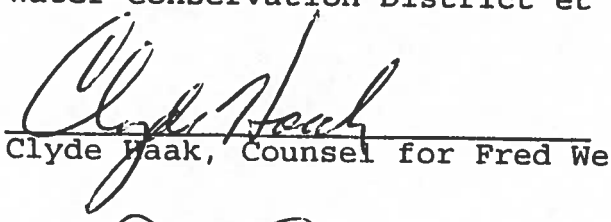
Done at San Antonio on this 22ND day of September 1994.

Edward C Prado

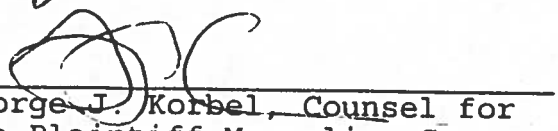
U.S. District Judge

Approved as to Substance and Form

Pete Nieto, Counsel for the
Defendants Medina County Underground
Water Conservation District et al.



Clyde Haak, Counsel for Fred Wells



George J. Korbel, Counsel for
the Plaintiff Marcelino Correa