



Voting Determination Letters for Alabama

The Civil Rights Division has prepared this site to make Civil Rights Division documents more available to the public.

To the extent that any documents do not currently comply with Section 508 of the Rehabilitation Act because of the poor quality of the original documents used to prepare this site, the Division is applying its available resources in an effort to create alternative records that are readable.

Determination Letters for Alabama, by date.

Jurisdiction and date	Description and submission numbers	Notes
State of Alabama 08/01/1969 (pdf)	Act No. 243 (1969), Garrett Act--Independent Candidate qualification deadline (T6864)	
Morgan County 11/13/1969 (pdf)	Act No. 221 (1965)--poll list signature requirement (T6813)	
Escambia County 11/13/1969 (pdf)	Act No. 479 (1967)--poll list signature requirement (T6819)	
Mobile County 11/13/1969 (pdf)	Act No. 812 (1965)--poll list signature requirement (T6814)	

Baldwin County 11/13/1969 (pdf)	Act No. 60 (1966)--poll list signature requirement (T6815)	Withdrawal 10-21-75 (V8804-8808)
Russell County 11/13/1969 (pdf)	Act No. 119 (1967)--poll list signature requirement (T6817)	
Montgomery County 11/13/1969 (pdf)	Act No. 112 (1966)--poll list signature requirement (T6816)	
Dale County 11/13/1969 (pdf)	Act No. 126 (1967)--poll list signature requirement (T6818)	
Lee County 11/13/1969 (pdf)	Act No. 552 (1965)--poll list signature requirement (T6820)	
Mobile County 12/16/1969 (pdf)	Act No. 1052 (1969)--poll list signature requirement (T6833)	
State of Alabama 03/13/1970 (pdf)	Act No. 604 (1970)--absentee registration literacy requirement (T6812)	
Birmingham (Jefferson Cty.) 07/09/1971 (pdf)	Act No. 507 (1969)--numbered posts (T7933)	
Talladega (Talladega Cty.) 07/23/1971 (pdf)	Act No. 91 (1971)--anti-single shot (V3059)	
Autauga County School District 03/20/1972 (pdf)	Act No. 2268 (1971)--at-large elections; residency requirement (V3928)	

Autauga County 03/20/1972 (pdf)	Act No. 1451 (1971) at-large elections; majority vote requirement; residency requirement (V4078-79)	
State of Alabama 04/04/1972 (pdf)	Act Nos. 2229 and 2230 (1972)--assistance to illiterates restricted (V3871-72)	
State of Alabama 08/14/1972 (pdf)	Act No. 2324 (1971)--two independent candidate petition signature requirements (V4074)	
State of Alabama 12/26/1972 (pdf)	Act No. 2445 (1971)--elected to appointed justices (V4105)	
Mobile (Mobile Cty.) 08/03/1973 (pdf)	Act No. 1483 (1971)--candidate qualification procedures (V5607)	
Pike County 08/12/1974 (pdf)	Reapportionment of Democratic Party Executive Committee (V6511)	
Sumter Cty. Democratic Executive Committee 10/29/1974 (pdf)	Anti-single shot (V6901)	
Talladega (Talladega Cty.) 03/14/1975 (pdf)	Ordinance No. 997--numbered posts (V7125)	
Fairfield (Jefferson Cty.) 04/10/1975 (pdf)	Annexation (V6603)	Withdrawn 10-8-76

Alabaster (Shelby Cty.) 07/07/1975 (pdf)	Six annexations (V8168-69)	Withdrawn 5-3-83 upon change in method of election
Bessemer (Jefferson Cty.) 09/12/1975 (pdf)	Seven Annexations (V7007; X0910-16)	Withdrawn 7-7-86 upon change in method of election
Phenix City (Russell Cty.) 12/12/1975 (pdf)	Act No. 698 (1975)--staggered terms (V9991)	
State of Alabama 01/16/1976 (pdf)	Act No. 1196, Sections 5, 43, 44-primary date (X0521)	
Pickens County 02/18/1976 (pdf)	Reapportionment of Democratic Party Executive Committee (V6511)	
State of Alabama 02/20/1976 (pdf)	Act No. 1205 (1975)--combines Bibb and Hale Counties for judicial district (X1121)	
Mobile (Mobile Cty.) 03/02/1976 (pdf)	Act No. 823 (1965), Sections 2 and 12--form of city government and specified duties for commissioners (V9335)	
Pickens County School District 03/05/1976 (pdf)	Act No. 72 (1975)--redistricting (X2669)	
Chambers County 03/08/1976 (pdf)	Act No. 475 (1973)--at-large nomination of county commissioners; Act No. 2001 (1971) (V9127; X1782B)	

Chambers County School District 03/10/1976 (pdf)	Act No. 843 (1975)--at-large elections; numbered posts; majority vote requirement (X1840)	
Hale County 04/23/1976 (pdf)	Act No. 1092 (1969)--at-large elections (V6804)	
Sheffield (Colbert Cty.) 07/06/1976 (pdf)	At-large method of election (V8341)	
Hale County 12/29/1976 (pdf)	Act Nos. 320 (1965), 2022 (1971) and 620 (1973)--at-large elections (X8956)	Declaratory judgment denied in Hale County v. United States, 496 F. Supp. 1206 (D.D.C. 1980)
Alabaster (Shelby Cty.) 12/27/1977 (pdf)	Two annexations (A3009; A2991)	Withdrawn 5-3-83 upon change in method of election
Barbour County 07/28/1978 (pdf)	Act Nos. 10 (1965) and 171 (1967)--method of election--at-large elections; residency requirements; reduction in number of commissioners from seven to five; numbered posts for dual-member residency district (A3381)	
Hayneville (Lowndes Cty.) 12/29/1978 (pdf)	Incorporation (A6405)	
Clarke County 02/26/1979 (pdf)	Act No. 2446 (1971)--at-large election of county commission (C0017)	
Pleasant Grove (Jefferson Cty.) 02/01/1980 (pdf)	Act No. 79-419 (1979)--annexation (80-1197)	Declaratory judgment denied in City of Pleasant Grove v. United States, 623 F. Supp. 782 (D.D.C.

1985), aff'd, 479 U.S. 462
(1987)

Selma (Dallas
Cty.)
04/28/1980
([pdf](#))

Redistricting
(80-1168)

Sumter County
10/17/1980
([pdf](#))

Act No. 79-729 (1979)--voting machines; number of
beats; polling places
(7X-0062)

Barbour County
07/21/1981
([pdf](#))

Redistricting
(81-1085)

Conecuh
County
09/14/1981
([pdf](#))

Act No. 2284 (1971)--method of election (two multi-
member districts)
(80-1151)

Perry County
09/25/1981
([pdf](#))

Act No. 81-226--purge and reidentification of voters
(81-1191)

Sumter County
10/02/1981
([pdf](#))

Act No. 81-224--reidentification of voters
(81-1211)

Wilcox County
10/26/1981
([pdf](#))

Act No. 81-383--purge and reidentification of voters
(81-1224)

Perry County
10/26/1981
([pdf](#))

Act No. 81-635--voting machines
(81-1192)

Withdrawn 4-19-82

Barbour County
11/16/1981
([pdf](#))

Redistricting
(81-1089)

Montgomery (Montgomery Cty.) 01/05/1982 (pdf)	Redistricting (81-1180)	Withdrawn 2-23-82
Conecuh Cty. Democratic Executive Committee 04/23/1982 (pdf)	Method of election (two multi-member districts); size of committee (82-1336)	
State of Alabama 05/06/1982 (pdf)	Act No. 81-1049--House and Senate reapportionment (82-1363)	
State of Alabama 07/19/1982 (pdf)	Act Nos. 572 (H.B. No. 278) and 611 (H.B. No. 10) (1982)--candidate qualifying and nominating procedures for minor parties (82-1365)	
Butler County 07/19/1982 (pdf)	Act No. 136 (1969)--method of electing county commissioners (7X-0049)	
Conecuh County 07/26/1982 (pdf)	Redistricting (82-1339)	
State of Alabama 08/02/1982 (pdf)	Act No. 82-629 (H.B. No. 19)--House and Senate reapportionment (82-1366)	
Mobile County 10/19/1982 (pdf)	Act No. 81-740 and No. 82-377--voter registration procedures (81-1171; 82-1447)	
Tallapoosa County 05/10/1983 (pdf)	Method of electing county commissioners from single-member districts to at-large (83-1374)	

Monroe County 02/17/1984 (pdf)	Method of electing county commissioners from single-member districts to at-large election (7X-0058)	
Adamsville (Jefferson Cty.) 03/26/1984 (pdf)	1981 and 1982 annexations (totaling 34) (84-1517)	Withdrawn 7-27-84 upon change in method of election
Selma (Dallas Cty.) 04/20/1984 (pdf)	Ordinance No. 83-05--redistricting (Councilmanic wards) (83-1242)	
Greene County 06/18/1984 (pdf)	Act No. 507, H.B. No. 830 (1983)--changes the method of appointing the members of the county racing commission (84-1505)	Withdrawn 10-31-84--determined not to be a change affecting voting; subsequently enjoined under Section 5 from being implemented in Hardy v.Wallace, 603 F. Supp. 174 (N.D. Ala. 1
Eutaw (Greene Cty.) 08/21/1984 (pdf)	Districting plan (84-1502)	
Baldwin County 12/11/1984 (pdf)	Act No. 84-734--purge and reidentification of voters (84-1416)	
Houston County 10/15/1985 (pdf)	At-large elections with numbered posts and Act No. 84-571--at-large elections with four candidate residency districts; numbered positions (80-1180; 84-1513)	
Greensboro (Hale Cty.) 10/21/1985 (pdf)	Deannexation (85-1532)	

Marengo County 02/10/1986 (pdf)	Increase in number of members from five to six; method of election--from at-large to mixed; districting plan (county commission districts and board of education) (86-2012; 86-2013)	
Dallas County 06/02/1986 (pdf)	Method of election--from at-large to single-member districts; districting plan (commissioners) (86-1882)	
Bay Minette (Baldwin Cty.) 10/06/1986 (pdf)	Three annexations (85-1442; 85-1443; 85-1445)	Withdrawn 6-22-87, upon change in method of election
Alexander City (Tallapoosa Cty.) 12/01/1986 (pdf)	1986 annexation (86-2116)	Withdrawn 12-7-87
Prichard (Mobile Cty.) 02/03/1987 (pdf)	Act No. 58 (1971) and the 1971 deannexation (86-2037)	
Leeds (Jefferson, St. Clair, and Shelby Ctys.) 05/04/1987 (pdf)	Twenty-nine annexations (85-1578; 85-1579; 86-1960; 87-1615)	Withdrawn 5-23-88, upon change in method of election
Marion (Perry Cty.) 05/05/1987 (pdf)	Implementation of the January 7, 1965, resolution creating the separate city school district (87-1706)	
Dallas County School District 06/01/1987 (pdf)	Districting plan (87-1555)	

Roanoke (Randolph Cty.) 03/15/1988 (pdf)	Multimember district method of election; districting plan; two annexations; two referenda (87-1722)	Objection to annexations and referenda Withdrawn upon change in method of election
Tallassee (Elmore and Tallapoosa Ctys.) 12/19/1988 (pdf)	Ordinance No. 86-213--revised annexation requirements (88-1891)	
State (89-1469) and Dothan (Dale, Henry, & Houston Ctys.) 06/12/1989 (pdf)	Act No. 88-445, as amended by Act No. 88-331--insofar as it provides that a Class 5 municipality (such as Dothan) that adopts the mayor-commissioner-city manager form of government is required to utilize a four single-member district method of election and the districting plans (adopted by Dothan) which sought to implement that requirement (89-1285; 89-4040)	
Foley (Baldwin Cty.) 11/06/1989 (pdf)	Three annexations (86-1811)	Withdrawn 7-1-96
State Democratic Party 12/01/1989 (pdf)	Amendment of the rules of the Alabama Democratic Party, which changes the method of selecting members of the State Democratic Executive Committee (SDEC); alters the method of selecting the Vice Chairman for Minority Affairs; and changes the method of selecting minority members of the Executive Board of the SDEC (89-1264)	
Dallas County 06/22/1990 (pdf)	Additional procedures for the 1990 implementation of the voter reidentification and purge program under Act No. 84-389, including the schedule and voter update program (90-1693)	
Valley (Chambers Cty.) 10/12/1990 (pdf)	Creation of the Valley School System (89-1242)	Withdrawn 7-27-92

Democratic Party (Perry Cty.) 12/03/1990 (pdf)	1989 Bylaws concerning the fair representation principle and the rule for equal division by gender (Article II, Section 2, fourth through seventh sentences) to elect executive committee members (90-1837)	
Valley (Chambers Cty.) 12/31/1990 (pdf)	Annexation (90-1663)	Withdrawn 12-9-91 upon change in method of election
Democratic Party (Lamar Cty.) 01/25/1991 (pdf)	Increase in number of members from 23 to 49; change in the method of election from single-member districts to a mix of single-member districts and multimember districts with designated posts; a March 8, 1990, organizational plan, which provides, inter alia, for a decrease in the number of popularly elected members from 49 to 40, a change in the method of election from electing members from mixed single- and multi-member districts to four 10-member districts with plurality vote, a rule for equal division by gender by district, a districting plan, a change from an elective to an elective-appointive system with the principle of fair representation, and the procedures for the appointment of additional members (90-1769)	
Democratic Party (Limestone Cty.) 01/28/1991 (pdf)	Increase in number of members from 25 to 32; the 1970 increase in number of members from 32 to 45, a change in method of election from single-member districts to 43 single-member districts and 1 two-member district, a redistricting plan, and adoption of numbered posts in the multi-member district; the 1982, 1983, and 1985 redistrictings; the 1985 increase in number of members from 45 to 48, the change in method of election to 9 single-member districts, 11 two-member districts, 3 three-member districts, and 2 four-member districts; and the September 7, 1989, Rules, as amended on March 1, 1990, which provide for a decrease in number of members from 48 to 40, a change in method of election to 4 ten-member districts by plurality vote, a redistricting, and a change from an elective to an elective-appointive system with the principle of fair representation and the procedures therefor to appoint additional members (90-1769)	

State of Alabama 11/08/1991 (pdf)	Act No. 90-539, which creates a fourth circuit judgeship in the 20th Judicial Circuit and the implementation schedule for that change (91-0518)	Withdrawn 3-18-96
State of Alabama 12/23/1991 (pdf)	Act No. 91-640, which creates a 25th circuit judgeship in the Tenth Circuit for the Bessemer Division, and eighth circuit judgeship in the 15th Circuit, and the implementation schedule for those changes (91-4215)	
State of Alabama 03/27/1992 (pdf)	Act No. 92-63, which provides the redistricting plan for congressional districts (92-1176)	
Dallas County 05/01/1992 (pdf)	Redistricting plan for the board of education (92-1001)	
Dallas County 07/21/1992 (pdf)	Redistricting plan for the board of education (92-2503)	
Selma (Dallas Cty.) 11/12/1992 (pdf)	Redistricting plan for the city council (92-4187)	
Greensboro (Hale Cty.) 12/04/1992 (pdf)	Districting plan for the city council (92-3376)	
Dallas County 12/24/1992 (pdf)	Redistricting plan for the board of education (92-4848)	
Selma (Dallas Cty.) 03/15/1993 (pdf)	Redistricting plan for the city council (93-0110)	

Foley (Baldwin Cty.) 08/30/1993 (pdf)	Ordinance No. 472-93-residential annexation (93-1106)	Withdrawn 7-1-96
State of Alabama 11/16/1993 (pdf)	Act No. 93-882: Establishment of sixth position for the sixth Judicial Circuit (93-3476)	Withdrawn 3-18-96
Greensboro (Hale Cty.) 01/03/1994 (pdf)	Districting plan for the city council (93-4223)	
State of Alabama 01/31/1994 (pdf)	Amendment 425 to the Alabama Constitution, insofar as it provides that a referendum on a local constitutional amendment may not be held unless it is first approved by the Local Constitutional Amendment Commission (89-1439)	
State of Alabama 04/14/1994 (pdf)	The changes for the courts of criminal and civil appeals and the supreme court occasioned by Act Nos. 602 and 987 (1969), 75 (1971), and 346 (1993) in the context of the at-large method of electing these courts (93-2322; 93-3195-96)	Withdrawn 3-18-96
Tallapoosa County 02/06/1998 (html pdf)	Redistricting plan (97-1021)	
Alabaster (Shelby Cty.) 08/16/2000 (html pdf)	Annexations (Ordinance Nos. 94-338 and 96-410) (2000-2230)	
Mobile County 01/08/2007 (html pdf)	Change in method of election for filling vacancies occurring on the Mobile County Commission from special election to gubernatorial appointment (2006-6792)	01/08/2007
City of Calera	One hundred and seventy seven annexations and a	

8/25/2008 (2008-1621)
([html](#) | [pdf](#))

Updated May 18, 2020



Civil Rights Division

U.S. Department of Justice
950 Pennsylvania Avenue NW
Office of the Assistant Attorney General,
Main
Washington DC 20530



Civil Rights Division
202-514-3847

TTY/TDD: 711

AUG 1 1969

Honorable MacDonald Gallion
Attorney General of Alabama
State Capitol
Montgomery, Alabama

Dear Mr. Attorney General:

This is in reference to Act No. 243, enacted on May 11, 1967 by the Alabama Legislature at the 1967 Special Session. In the case of Hadnett v. Amos, 394 U.S. 358 the Supreme Court of the United States held that this act was within the purview of Section 5 of the Voting Rights Act of 1965. Following this decision, copies of the act were submitted to the Attorney General pursuant to Section 5.

We have carefully examined and considered this law. The Garrett Act prevents newly organized political groups from trying first to have their candidates elected in a party primary before determining to run as independents. A newly organized group, such as the National Democratic Party of Alabama, which directs a major effort at Negro voters newly registered under the Voting Rights Act, cannot, under this system, first attempt to prevail in the Democratic Party primary before turning to independent candidates. Nor could it wait until the day of the primary before deciding whether to run independently. Because of these factors and because of the experience of the NDPA prior to the general election of 1968, I have concluded that the Garrett Act will have the effect of discriminating against Negro voters on account of their race, and of denying them an effective voice in general elections held in Alabama.

In the absence of information showing the contrary, I must, on behalf of the Attorney General, interpose objections to the implementation of this act.

Should you wish to present justification for the changes in election procedures provided for by the Garrett Act, the Attorney General will gladly reconsider his position. Of course, as provided for by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that such charges in election and voting procedures do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

JERRIS LEONARD
Assistant Attorney General
Civil Rights Division

NOV 13 1969

D.J. 166-012-3

Honorable MacDonald Gallion
Attorney General
State of Alabama
Montgomery, Alabama 36104

Dear Mr. Attorney General:

This is in reference to your letter of September 18, 1969, with which you submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 20 Alabama Acts relating to election procedures and voting.

I have examined and considered the submitted Acts. The Attorney General will not at this time interpose any objection to the Act authorizing boards of registrars to meet additional days for the purpose of registering voters, the Acts relating to absentee voters and the Acts providing for the reidentification of voters in order to purge from voting lists the names of persons who are now deceased or who no longer reside in the county or the state. However, as provided by Section 5 of the Voting Rights Act of 1965, the failure to object does not bar any subsequent action to enjoin enforcement of these Acts.

With regard to Acts Nos. 221 (1965), 812 (1965), 60 (1966), 112 (1966), 119 (1967), 126 (1967), 479 (1967), and 552 (1967) I must on behalf of the Attorney General interpose objections to the provisions in those Acts requiring a voter to sign, at the voting machine, a poll list before he is allowed to enter the machine

- 2 -

to vote. It is our view that these provisions in the Acts, if enforced, would have the effect of discriminating against Negro voters and would violate the provisions of Section 4 of the Voting Rights Act of 1965.

Should you wish to present justification for the provisions objected to or evidence that their enforcement would not violate Section 4 of the Voting Rights Act of 1965, we will consider the matter further. Of course, as provided for by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the provisions objected to do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

JERRIS LEONARD
Assistant Attorney General
Civil Rights Division

NOV 13 1969

D.J. 166-012-3

Honorable MacDonald Gallion
Attorney General
State of Alabama
Montgomery, Alabama 36104

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Should you wish to present justification for the provisions objected to or evidence that their enforcement would not violate Section 4 of the Voting Rights Act of 1965, we will consider the matter further. Of course, as provided for by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the provisions objected to do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

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JERRIS LEONARD
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NOV 13 1969

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Attorney General
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Should you wish to present justification for the provisions objected to or evidence that their enforcement would not violate Section 4 of the Voting Rights Act of 1965, we will consider the matter further. Of course, as provided for by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the provisions objected to do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

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JERRIS LEONARD
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to vote. It is our view that these provisions in the Acts, if enforced, would have the effect of discriminating against Negro voters and would violate the provisions of Section 4 of the Voting Rights Act of 1965.

Should you wish to present justification for the provisions objected to or evidence that their enforcement would not violate Section 4 of the Voting Rights Act of 1965, we will consider the matter further. Of course, as provided for by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the provisions objected to do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

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NOV 13 1969

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Should you wish to present justification for the provisions objected to or evidence that their enforcement would not violate Section 4 of the Voting Rights Act of 1965, we will consider the matter further. Of course, as provided for by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the provisions objected to do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

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With regard to Acts Nos. 221 (1965), 812 (1965), 60 (1966), 112 (1966), 119 (1967), 126 (1967), 479 (1967), and 552 (1967) I must on behalf of the Attorney General interpose objections to the provisions in those Acts requiring a voter to sign, at the voting machine, a poll list before he is allowed to enter the machine

- 2 -

to vote. It is our view that these provisions in the Acts, if enforced, would have the effect of discriminating against Negro voters and would violate the provisions of Section 4 of the Voting Rights Act of 1965.

Should you wish to present justification for the provisions objected to or evidence that their enforcement would not violate Section 4 of the Voting Rights Act of 1965, we will consider the matter further. Of course, as provided for by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the provisions objected to do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

JERRIS LEONARD
Assistant Attorney General
Civil Rights Division

NOV 13 1969

D.J. 166-012-3

Honorable MacDonald Gallion
Attorney General
State of Alabama
Montgomery, Alabama 36104

Dear Mr. Attorney General:

This is in reference to your letter of September 18, 1969, with which you submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 20 Alabama Acts relating to election procedures and voting.

I have examined and considered the submitted Acts. The Attorney General will not at this time interpose any objection to the Act authorizing boards of registrars to meet additional days for the purpose of registering voters, the Acts relating to absentee voters and the Acts providing for the reidentification of voters in order to purge from voting lists the names of persons who are now deceased or who no longer reside in the county or the state. However, as provided by Section 5 of the Voting Rights Act of 1965, the failure to object does not bar any subsequent action to enjoin enforcement of these Acts.

With regard to Acts Nos. 221 (1965), 812 (1965), 60 (1966), 112 (1966), 119 (1967), 126 (1967), 479 (1967), and 552 (1967) I must on behalf of the Attorney General interpose objections to the provisions in those Acts requiring a voter to sign, at the voting machine, a poll list before he is allowed to enter the machine

- 2 -

to vote. It is our view that these provisions in the Acts, if enforced, would have the effect of discriminating against Negro voters and would violate the provisions of Section 4 of the Voting Rights Act of 1965.

Should you wish to present justification for the provisions objected to or evidence that their enforcement would not violate Section 4 of the Voting Rights Act of 1965, we will consider the matter further. Of course, as provided for by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the provisions objected to do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

JERRIS LEONARD
Assistant Attorney General
Civil Rights Division

NOV 13 1969

D.J. 166-012-3

Honorable MacDonald Gallion
Attorney General
State of Alabama
Montgomery, Alabama 36104

Dear Mr. Attorney General:

This is in reference to your letter of September 18, 1969, with which you submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 20 Alabama Acts relating to election procedures and voting.

I have examined and considered the submitted Acts. The Attorney General will not at this time interpose any objection to the Act authorizing boards of registrars to meet additional days for the purpose of registering voters, the Acts relating to absentee voters and the Acts providing for the reidentification of voters in order to purge from voting lists the names of persons who are now deceased or who no longer reside in the county or the state. However, as provided by Section 5 of the Voting Rights Act of 1965, the failure to object does not bar any subsequent action to enjoin enforcement of these Acts.

With regard to Acts Nos. 221 (1965), 812 (1965), 60 (1966), 112 (1966), 119 (1967), 126 (1967), 479 (1967), and 552 (1967) I must on behalf of the Attorney General interpose objections to the provisions in those Acts requiring a voter to sign, at the voting machine, a poll list before he is allowed to enter the machine

- 2 -

to vote. It is our view that these provisions in the Acts, if enforced, would have the effect of discriminating against Negro voters and would violate the provisions of Section 4 of the Voting Rights Act of 1965.

Should you wish to present justification for the provisions objected to or evidence that their enforcement would not violate Section 4 of the Voting Rights Act of 1965, we will consider the matter further. Of course, as provided for by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the provisions objected to do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

JERRIS LEONARD
Assistant Attorney General
Civil Rights Division

JL:SHR:gra

DJ 166-012-3
#68-1-VRA5-2

DEC 18 1969

Honorable MacDonald Gallion
Attorney General
State of Alabama
Montgomery, Alabama 36104

Dear Mr. Attorney General:

This is in reference to your letter of October 22, 1969, with which you submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 a certified copy of Act No. 1057 passed in the 1969 Regular Session of the Legislature of Alabama and approved by the Governor on September 12, 1969.

On behalf of the Attorney General I must interpose an objection to the provision in that Act requiring a voter to sign, at the voting machine, a poll list before he is allowed to enter the machine to vote. As I stated in my letter of November 13, 1969, to you concerning similar statutory provisions previously submitted, it is my view that this provision of the Act, if enforced, would have the effect of discriminating against Negro voters and would violate the provisions of Section 4 of the Voting Rights Act of 1965.

Should you wish to present justification of the provision objected to or evidence that its enforcement would not violate Section 4 of the Voting Rights Act of 1965, I will consider the matter further. Of course, as provided by Section 5 of the Voting Rights Act of 1965, you have the alternative of instituting an action in the United States District Court for the District of Columbia

for a declaratory judgment that the provision objected to does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

JERRIS LEONARD
Assistant Attorney General
Civil Rights Division

MAR 13 1970

Honorable MacDonald Gallion
Attorney General
State of Alabama
Montgomery, Alabama 36104

Dear Mr. Attorney General:

This is in reference to Act Number 604 of the Legislature of the State of Alabama authorizing and providing for registration by mail of qualified electors who are members of the Armed Forces of the United States or who are employed outside the United States which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965.

Act Number 604, inter alia, requires the applicant for absentee registration to complete a written questionnaire without assistance. It is our view that this provision in effect imposes a literacy requirement for registration and that such a requirement, if enforced, would violate the provisions of Section 4 of the Voting Rights Act of 1965. Therefore, I must on behalf of the Attorney General interpose an objection to Act Number 604.

Should you wish to present justification for the Act objected to or evidence that its enforcement would not violate Section 4 of the Voting Rights Act of 1965, we will consider the matter further. Of course, as provided for by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the Act objected to does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

JERRIS LEONARD
Assistant Attorney General
Civil Rights Division

JUL 9 1971

Mr. John M. Breckenridge
City Attorney
Department of Law
600 City Hall
Birmingham, Alabama 35203

Dear Mr. Breckenridge:

This is in response to your submission under Section 5 of the Voting Rights Act of 1965, of several acts of the Alabama Legislature passed in 1965 and 1969.

The Attorney General will not interpose an objection to 1965 Acts No. 123, 131, or 133 at this time. I am constrained to inform you, however, that he does object to the implementation of 1969 Act No. 507 because the information we have leads us to conclude that the change will have a discriminatory effect.

We are also advised that the voting machines currently used in Birmingham automatically prevent "double-voting" (voting for more candidates than the number of seats to be filled) and can prevent "single-shot" voting, so that the potential existence of such problems would not appear to provide a substantial basis for the new enactment.

Section 5 provides that should you wish to pursue this matter further, you may seek a declaratory judgment from the District Court for the District of Columbia that this statute neither has the purpose nor will have

the effect of denying or abridging the right to vote on account of race or color. Until such a judgment is issued by that Court, however, the legal effect of this objection is to render unenforceable 1969 Act No. 507.

Sincerely,

DAVID L. NORMAN
Acting Assistant Attorney General
Civil Rights Division

SEP 14 1971

Mr. John M. Breckenridge
City Attorney
Department of Law
600 City Hall
Birmingham, Alabama 35203

Dear Mr. Breckenridge:

This is in response to your resubmission under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c, of 1969 Act No. 507, to which the Attorney General interposed an objection by letter dated July 9, 1971.

We have carefully considered the information supplied in your letter of July 19, 1971 resubmitting the statute, as well as the information previously gathered in connection with the prior submission of this legislation. Your letter apparently raises two points, the merits of the submission under Section 5 and the timeliness of our objection of July 9. With respect to the second point, it is our position that the sixty-day time period Section 5 establishes for consideration does not begin to toll until after the state or political subdivision has supplied the Attorney General with sufficient information to determine the merits of a submitted change. This interpretation was supported by four district judges in related reapportionment cases in Virginia. See attached Order on First Hearing Howell v. Mahan, C.A. No. 105-71-N (E.D. Va., filed May 24, 1971). Under this interpretation of the statute, the sixty days began to toll on May 10, 1971, when your letter of May 5 was received by the Department, and did not expire until after our July 9, 1971 letter was mailed to you.

With regard to the merits of Act No. 507, your letter does not include sufficient additional information to warrant a change in our position and we feel constrained to inform you that the Attorney General still objects to the statute on the basis that it will have the effect of abridging the right to vote on account of race. This conclusion was reached only after a search of the legislative history of the Act, review of past returns for Birmingham's municipal elections since 1963, and study of the mechanics of vote tallying in local elections.

Your letter of July 19 indicates a belief on your part that the relevant facts are different from those indicated by our investigation. Since we apparently do not share your views on the underlying facts, it may be that a judicial forum may be necessary to resolve these differences. As you know, Section 5 provides that should you wish to obtain an adjudication from such a forum, our objection does not foreclose your seeking a declaratory judgment from the District Court for the District of Columbia that this statute neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. Until such a judgment is issued by that Court, however, the legal effect of our continuing objection is to render unenforceable 1969 Act No. 507.

Sincerely,

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

July 23, 1971

Honorable William J. Baxley
Attorney General
State of Alabama
Montgomery, Alabama 36104

Dear Mr. Attorney General:

This is in reference to your letter of May 20, 1971, with which you submitted Act No. 91 Special Session of the Alabama Legislature 1971 for consideration by the Attorney General pursuant to Section 5 of the Voting Rights Act.

The Attorney General will not at this time interpose any objection to the Act except with respect to the provision against single shot voting for alderman.

I note that Representative Smith in his letter to you dated May 19, 1971, stated that the Act was to change certain election procedures in the City of Talladega to make them uniform with election procedures in other mayor-council cities and that everything else in the Act including the prohibition of single shot voting is present Alabama law and included in the Act merely for clarification purposes. However, as we read the Code of Alabama (Municipal Corporations), Title 37, single shot voting was prohibited by Section 33(1), enacted September 4, 1951. Section 33(1) of Title 37 was repealed by Acts, 1,61, enacted September 15, 1961. Therefore, it would appear that there is no general prohibition against single shot voting in Alabama and that the imposition of that

- 2 -

prohibition by Act No. 91 is a substantive change rather than a mere clarification of Alabama law.

If our analysis is correct, I must on behalf of the Attorney General interpose an objection to the provision of the Act prohibiting "single shot" voting for alderman. We are unable to conclude that this proposed change will not have an adverse racial effect prohibited by the Voting Rights Act.

Should you wish to present justification for the provision objected to or evidence that its enforcement does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, we will consider the matter further. Of course as provided by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the provisions objected to do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

DAVID L. NORMAN
Acting Assistant Attorney General
Civil Rights Division

[FACSIMILE]

DLN:JEK:clk
DJ 166-012-3

Mr. Leslie Hall
Assistant Attorney General
State of Alabama
Montgomery, Alabama 36104

MAR 20 1972

Dear Mr. Hall:

This is in reference to your submissions under Section 5 of the Voting Rights Act of 1965 to the Attorney General of Act No. 528, Acts of Alabama, 1967, Act No. 1451, Acts of Alabama, 1971, and Act No. 2268, Acts of Alabama, 1971. These submissions were received on January 20, 1972, November 1, 1971, and January 21, 1972, respectively. Supplemental information pertaining to Act No. 1451 was received December 11, 1971.

As I explained in my letter of February 14, the submission of Act No. 528 was necessary before the Attorney General could evaluate its successor, Act No. 1451. Thus, the sixty-day period of Section 5 began to run on Acts Nos. 1451 and 528 on January 20, 1972.

After considering the acts submitted, I cannot conclude that certain changes will not have the effect of abridging voting rights on account of race.

Section 6 of Act No. 1451 changes the procedure for electing County Commissioners from election by districts to election at-large within the county, and from requiring election by a plurality to requiring election by a majority of the voters. Where, as here, a county with a majority white population has within

- 2 -

it an election district within which a majority of the population is black, the change from election by districts to an at-large method of election necessarily has the effect of diluting that black voting strength, especially when a majority of the votes cast is required for election to an office. See Whitcomb v. Chavis, 403 U.S. 124 (1971); Allen v. State Board of Elections, 395 U.S. 644 (1969); Burns v. Richardson, 384 U.S. 73 (1966); Fortson v. Dorsey, 379 U.S. 433 (1965); Graves v. Barnes, W.D. Tex., No. A-17-CA-142, Slip Op. at 37-38; Sims v. Amos, No. 1744-N (M.D. Ala., Jan. 1972). I must, therefore, on behalf of the Attorney General, interpose an objection to the implementation of this section.

Act No. 2268 provides for the at-large election of members of the Board of Education and would supersede a system of election by districts. As with the at-large procedure for electing County Commissioners, this provision would have the effect of diluting black voting strength because it would substantially reduce the ability of the black population majority in one of the districts to elect a candidate of their choice to the Board of Education. I must, therefore, on behalf of the Attorney General, also object to implementation of this Act. In addition, with respect to Act No. 2268 as well as Act No. 1451, in fashioning a new plan for the election of the officers involved you may wish to give particular consideration to what the courts say about the majority requirement in the Barnes and Amos cases cited above.

Section 9 of Act No. 528 and Section 7 of Act No. 1451 appear to allow only those persons who have been nominated by a political party to become candidates for the office of County Commissioner, thereby precluding such candidacy to persons who could have gained nomination by petition and election by write-in votes as provided by Alabama law prior to the enactment of these provisions. You have indicated, however, that these provisions should

be interpreted only to prohibit persons who are not authorized to participate in a party nomination proceeding from so doing. On the basis of your interpretation and on the basis of the assurances of Probate Judge E. A. Grouby that this provision does not constitute a change in prior law or practice and does not preclude nomination by petition or voting by electors for write-in candidates, I will not object to its implementation. From the reasons for our lack of objection to this provision, it necessarily follows that the administration of any different interpretation of this provision will constitute a change in practice or procedure which must be submitted to the Attorney General or to the District Court for the District of Columbia pursuant to Section 5 of the Voting Rights Act.

Should you wish to pursue this matter further, the Attorney General will reconsider his objections upon your request within 10 days for an opportunity to present further substantiating or explanatory information not previously available. This information may be submitted in writing or at a conference convened pursuant to Sections 51.21 and 51.23 of the Section 5 guidelines, published September 10, 1971, in the Federal Register, Vol. 34, No. 174.

In addition, Section 5 provides that you may seek a declaratory judgment from the District Court for the District of Columbia that these provisions neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such a judgment is rendered by that court, however, the legal effect of the objections of the Attorney General is to render unenforceable the specified provisions.

Sincerely,

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

cc: Honorable E. A. Grouby
Judge of Probate
Autauga County
Prattville, Alabama 36067

[FACSIMILE]

DLN:JEK:clk
DJ 166-012-3

Mr. Leslie Hall
Assistant Attorney General
State of Alabama
Montgomery, Alabama 36104

MAR 20 1972

Dear Mr. Hall:

This is in reference to your submissions under Section 5 of the Voting Rights Act of 1965 to the Attorney General of Act No. 528, Acts of Alabama, 1967, Act No. 1451, Acts of Alabama, 1971, and Act No. 2268, Acts of Alabama, 1971. These submissions were received on January 20, 1972, November 1, 1971, and January 21, 1972, respectively. Supplemental information pertaining to Act No. 1451 was received December 11, 1971.

As I explained in my letter of February 14, the submission of Act No. 528 was necessary before the Attorney General could evaluate its successor, Act No. 1451. Thus, the sixty-day period of Section 5 began to run on Acts Nos. 1451 and 528 on January 20, 1972.

After considering the acts submitted, I cannot conclude that certain changes will not have the effect of abridging voting rights on account of race.

Section 6 of Act No. 1451 changes the procedure for electing County Commissioners from election by districts to election at-large within the county, and from requiring election by a plurality to requiring election by a majority of the voters. Where, as here, a county with a majority white population has within

- 2 -

it an election district within which a majority of the population is black, the change from election by districts to an at-large method of election necessarily has the effect of diluting that black voting strength, especially when a majority of the votes cast is required for election to an office. See Whitcomb v. Chavis, 403 U.S. 124 (1971); Allen v. State Board of Elections, 395 U.S. 644 (1969); Burns v. Richardson, 384 U.S. 73 (1966); Fortson v. Dorsey, 379 U.S. 433 (1965); Graves v. Barnes, W.D. Tex., No. A-17-CA-142, Slip Op. at 37-38; Sims v. Amos, No. 1744-N (M.D. Ala., Jan. 1972). I must, therefore, on behalf of the Attorney General, interpose an objection to the implementation of this section.

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Section 9 of Act No. 528 and Section 7 of Act No. 1451 appear to allow only those persons who have been nominated by a political party to become candidates for the office of County Commissioner, thereby precluding such candidacy to persons who could have gained nomination by petition and election by write-in votes as provided by Alabama law prior to the enactment of these provisions. You have indicated, however, that these provisions should

be interpreted only to prohibit persons who are not authorized to participate in a party nomination proceeding from so doing. On the basis of your interpretation and on the basis of the assurances of Probate Judge E. A. Grouby that this provision does not constitute a change in prior law or practice and does not preclude nomination by petition or voting by electors for write-in candidates, I will not object to its implementation. From the reasons for our lack of objection to this provision, it necessarily follows that the administration of any different interpretation of this provision will constitute a change in practice or procedure which must be submitted to the Attorney General or to the District Court for the District of Columbia pursuant to Section 5 of the Voting Rights Act.

Should you wish to pursue this matter further, the Attorney General will reconsider his objections upon your request within 10 days for an opportunity to present further substantiating or explanatory information not previously available. This information may be submitted in writing or at a conference convened pursuant to Sections 51.21 and 51.23 of the Section 5 guidelines, published September 10, 1971, in the Federal Register, Vol. 34, No. 174.

In addition, Section 5 provides that you may seek a declaratory judgment from the District Court for the District of Columbia that these provisions neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such a judgment is rendered by that court, however, the legal effect of the objections of the Attorney General is to render unenforceable the specified provisions.

Sincerely,

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

cc: Honorable E. A. Grouby
Judge of Probate
Autauga County
Prattville, Alabama 36067

[FACSIMILE]

DLN:JIS:clk
DJ 166-012-3

Mr. Leslie Hall
Assistant Attorney General
State of Alabama
Montgomery, Alabama 36104

APR 4 1972

Dear Mr. Hall:

This is in reference to your submission under the Voting Rights Act of Acts Nos. 2229 and 2230 dealing with assistance to voters. The submission was completed upon our receipt on February 5, 1972, of the additional information that was requested by my staff.

It is my understanding from your letter dated February 1, 1972, and your telephone conversation of January 31, 1972, with Mr. Jeremy Schwartz, an attorney on my staff, that notwithstanding the provisions of Title 37, §§34(50) and 34(103) of the Alabama Code it is the opinion of your office that voters in municipal elections who are unable adequately to read or write may receive the assistance of the person of their choice and that persons giving such assistance are not limited as to the number of such voters they may assist.

The submitted Acts, while providing for the assistance to such voters by persons who are not election officials, would restrict such assistants to persons who have not so acted for any other person during the election. Such restriction could have the effect of severely limiting the availability of persons who might be willing and able to provide assistance to voters as entitled. Furthermore, no corresponding limitation is imposed by Title 37 in municipal elections where paper ballots are used. See Title 37, §§34(39) and 34(92).

- 2 -

On the basis of our investigation, we are unable to conclude that the implementation of Acts 2229 and 2230 will not have the effect of impeding the ability of persons entitled to vote under the Voting Rights Act to cast effective ballots. I must, therefore, on behalf of the Attorney General of the United States, interpose an objection to the implementation of the submitted Acts.

Should you wish to pursue this matter further, the Attorney General will reconsider his objection upon your request within 10 days for an opportunity to present substantiating or explanatory information not previously available. This information may be submitted in writing or at a conference convened pursuant to Sections 51.21 and 51.23 of the Section 5 guidelines, published September 10, 1971, in the Federal Register, Vol. 36, No. 176.

In addition, despite this objection, the Voting Rights Act provides you the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that these enactments do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

AUG 14 1972

Honorable William J. Saxley
Attorney General
State of Alabama
Montgomery, Alabama 36104

Dear Mr. Attorney General:

This is in reference to your submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 of Act No. 2324, Acts of Alabama, Regular Session 1971, which we received March 27, 1972. Additional information pertinent to Act No. 2324 was received June 14, 1972.

We have considered the submitted changes and supporting information as well as data compiled by the Bureau of the Census and information and comments from interested parties. On the basis of this information the Attorney General will not object to the requirement that independent candidates for statewide offices submit qualifying petitions signed by 10,000 voters, to the provisions relating to political parties in the State of Alabama, or to the elimination of independent candidates for municipal elections.

However, with respect to the provisions which increase the number of signatures required on petitions of independent candidates for county offices from 25 to 1,000 signatures and from 300 signatures to 10,000 for those offices for which persons are elected from political subdivisions larger than a county but less than statewide, i.e. judicial circuits, state and federal legislatures and regional offices, we are unable to conclude as we must under Voting Rights Act, that these increases will not have the purpose or effect of abridging the voting rights of racial minorities by substantially increasing the signature requirements.

While we recognize the state's legitimate interest in eliminating frivolous candidacies, to require such a large number of signatures especially in many small rural counties, may well discourage, or prohibit minority candidates from seeking nomination.

While we realize the difficulties caused by conclusions here, we are persuaded that the Voting Rights Act requires this result. Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that the changes herein found objectionable neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race.

Sincerely,

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

DEC 26 1972

DJ 166-012-3

Honorable William J. Saxley
Attorney General
State of Alabama
Montgomery, Alabama 36104

Dear Mr. Attorney General:

This letter is in reference to your submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 of Act Numbers 1585 and 2445, Acts of Alabama, Regular Session 1971, which we received May 30, 1972. Additional information pertinent to Act Numbers 1585 and 2445 was received from July 5, 1972, through August 24, 1972. Further information relevant to your submission was requested on October 20, 1972, and received October 24, 1972.

We have considered the submitted changes and supporting information as well as data compiled by the Bureau of the Census and information and comments from interested parties, including local and state officials of Alabama. On the basis of this information the Attorney General will not object to the provisions in Act Number 1585 abolishing Justice of the Peace Courts or to the changes in Act Number 2445 which establish Justice Courts for each county.

However we are unable to conclude as we must under the Voting Rights Act, that the provision in Act Number 2445 making the office of judge for the Justice Courts appointive will not have the purpose or effect of abridging the voting rights of racial minorities. Therefore, on behalf of the Attorney General, I must interpose an objection to that provision.

We recognize the state's legitimate interest in reforming its court system to conform to constitutional mandates. Our decision to object, however, is based on information indicating that in many counties in which Justice of the Peace Courts existed prior to Act Number 1585, Negroes have sought and won election to that office and our belief, based on relevant accumulated data, that the opportunity similarly to win election as judge of the newly created Justice Courts is effectively negated by the appointive provisions of Act Number 2445.

While we realize the difficulties caused by these conclusions, we are persuaded that the Voting Rights Act requires this result. Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that the changes herein found objectionable neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race.

Sincerely,

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

AUG 3 1973

Honorable William J. Baxley
Attorney General
State of Alabama
Montgomery, Alabama 36104

Dear Mr. Attorney General:

This is in reference to your submission to the Attorney General pursuant to Section 3 of the Voting Rights Act of 1965 of Act No. 1483, Acts of Alabama, Regular Session 1971, which we received June 4, 1973.

We have considered the submitted changes and supporting information, data compiled by the Bureau of the Census as well as the opinion and decree in Thomas v. Mine, 317 F. Supp. 179 (S.D. Ala., 1970). On the basis of this information we cannot conclude, as we must under the Voting Rights Act of 1965, that these changes will not have a racially discriminatory effect on the voting rights of racial minorities. Consequently, on behalf of the Attorney General I must interpose an objection to the candidate qualification provisions outlined in Act 1483. While we recognize the state's legitimate interest in eliminating frivolous candidacies, it is our judgment that to require such a large number of signatures or the filing of a "poor man's oath", in view of the population, registration and economic statistics of the City of Mobile may well discourage or prohibit minority candidates from seeking election.

- 2 -

While we realize the difficulties caused by conclusions here, we are persuaded that the Voting Rights Act requires this result. Of course, Section 3 permits you to seek a declaratory judgment from the District Court for the District of Columbia that the changes herein found objectionable neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race.

Sincerely,

J. STANLEY FOTTINGER
Assistant Attorney General
Civil Rights Division

AUG 12 1974

Mr. Oliver W. Brantley
County Attorney
Post Office Box 334
Troy, Alabama 36081

Dear Mr. Brantley:

This is in reference to your submission pursuant to Section 5 of the Voting Rights Act of 1965 of Act No. 156 of 1969 which provides that candidates for the Court of County Commissioners in Pike County be elected in an at-large election system. Your submission was completed on June 11, 1974.

We have considered the submitted plan along with Census Bureau data and information and comments from interested parties. Our analysis reveals that even though blacks constitute over 34% of the population (1970 Census) in Pike County no black has ever been elected to the Court of County Commissioners in modern times. We further note the existence of the majority vote requirement in primary elections, that commissioners are elected on a staggered basis and Act No. 156 requires a candidate to reside in and seek election from one of the four commissioner districts.

Recent court decisions suggest that if an at-large voting system is employed under circumstances such as those existing in Pike County, the utilization of residency and majority vote requirements in conjunction with members being elected on a staggered basis would operate to minimize or dilute the voting strength of the minority and, thus, have an invidious discriminatory effect. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971); Zimmer v. McKeithen,

- 2 -

425 F. 2d 1297 (5th Cir. 1973); Beer v. United States, Civ. No. 1495-73 (D.D.C. March 14, 1974).

In view of these court decisions and on the basis of all the available facts and circumstances, the Attorney General is unable to conclude, as he must under the Voting Rights Act, that Act No. 156 will not have a discriminatory racial effect on voting rights. Therefore, while not objecting to at-large elections, on behalf of the Attorney General, I must interpose an objection to the implementation of the change insofar as it requires residency in particular districts, a majority vote, and staggered terms.

Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this plan neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. However, until such a judgment is rendered by that Court, the legal effect of the objection by the Attorney General is to render unenforceable the residency requirement plan.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

OCT 29 1974

Mr. B. G. Hines
Chairman
Sutler County Democratic
Executive Committee
Opes, Alabama 35460

Dear Mr. Hines:

This is in reference to your submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 of the 1970 enlargement of the Sutler County Democratic Executive Committee. Your submission was received on August 27, 1974.

We have considered the change in question and supporting information furnished by you as well as data compiled by the Bureau of the Census and information and comments from interested parties. This information shows that the enlargement was made immediately after the qualification of ten black citizens for positions on the Sutler County Democratic Executive Committee (hereinafter referred to as the Committee) and after the close of the qualifying period for Committee candidacy, but prior to the election date for Committee membership. The information also shows that all the individuals appointed to the Committee pursuant to the enlargement were white, with the result that the otherwise projected 10 to 8 black majority on the Committee was changed by expansion to a 25 to 10 black minority.

USA, Birmingham, Ala.
Probate Judge Wilbur E. Dearman

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Our information shows further that in 1974 elections were held for all positions on the enlarged Committee and that 16 blacks and 18 whites were elected as new members, replacing the old Committee created partially by appointments in 1970. Thus, it would appear that the effect on black voting strength of the enlargement of the Committee in 1970 and appointment of whites to the vacancies created has been substantially corrected and the Attorney General, therefore, at this point in time, does not interpose an objection to the increase in the number of Committee members.

However, during the course of our evaluation of your submission, it came to our attention that the method adopted for electing the enlarged Committee, and the method used in this year's election, utilizes a number of multi-member districts (or beats) and disallows single-shot voting in those districts. In this connection, we note that the use of multi-member districts and anti-single shot requirements in areas with substantial populations of racial minorities has been found to dilute minorities' voting strength. See, C.A. Georgia v. United States, 411 U.S. 526 (1973), and Stevenson v. West, C.A. No. 72-45 (D.S.C. April 7, 1972). Our analysis in the instant matter indicates that such a racially dilutive effect may well have obtained in this year's elections for Committee members in Sumter County.

In view of these factors, the Attorney General is unable to conclude, as he must under the Voting Rights Act, that the use of the anti-single shot requirement in several of the beats will not have a racially discriminatory effect. For that reason, on behalf of the Attorney General I must interpose an objection to that feature of the method of electing members to the Sumter County Democratic Executive Committee in multi-member Beats 6, 7, and 18 in future elections.

- 3 -

Of course, as is provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that the enlargement neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

MAR 14 1975

Mr. George F. Wooten
Attorney, City of Talladega
Dixon, Wooten, Boyett & McGrary
223 W. North Street
Talladega, Alabama 35160

Dear Mr. Wooten:

This is in reference to Ordinance No. 997 adopting a numbered post system for the election of aldermen in the City of Talladega which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. The submission was completed on January 13, 1975. Although we have been aware of your request for expedited consideration of this submission pursuant to procedural guidelines for the administration of Section 5 (28 C.F.R. §51.22), we have been unable to reach a determination in the matter until the present time.

In examining a numbered post requirement under Section 5 of the Voting Rights Act, it is incumbent upon the Attorney General to determine whether that requirement -- either in purpose or effect -- results in the minimization or dilution of minority voting strength. In this instance, we have concluded that the numbered post requirement for the election of aldermen in the City of Talladega would have that effect.

Our analysis took into consideration a number of factors which can be summarized as follows. The population of the city, according to the 1970 Census, is 17,662, 32% of which is black. The city's five-member governing body

- 2 -

is elected on an at large, i.e., multi-member, majority vote basis. Prior to and since the adoption of the city's mayor-council form of government in 1971, the possibility of electing the council from single-member districts was discussed but ultimately rejected. No black persons have been elected to the city council. The history of black participation in the electoral process of the city suggests a pattern of racial bloc voting.

The numbered post requirement, which is consistent with state law, creates separate offices out of seats in a multi-member district, requires that all candidates qualify for a specific numbered place and permits each voter to vote for only one candidate in each place. Our concern is with the changes in voting which would proceed from a numbered post requirement, given the city's present multi-member electoral system. In this context, black voters would have little opportunity to elect a representative of their choice to the city council. As one recent court decision indicates:

In a true at large election, if the majority spreads its votes around and the minority single shot votes, the minority strength is concentrated, thus increasing their chance of electing. However, if the minority candidate is forced to run against a specific candidate for a specific seat, the majority can readily identify for whom they must vote in order to defeat the minority candidate.

Dunston v. Scott, 336 F. Supp. 206, 213, n. 9 (E.D. N.C., 1972).

For that reason, the Attorney General has interposed objections under Section 5 of the Voting Rights Act

- 3 -

to numbered post systems in a number of other similar jurisdictions and we are unable to conclude, as we must under the Voting Rights Act, that implementation of the numbered post requirement in Talladega will not have a racially discriminatory effect. Therefore, on behalf of the Attorney General, I must interpose an objection under Section 5. However, as the law provides, a declaratory judgment that this change does not have the proscribed purpose or effect may be sought in the United States District Court for the District of Columbia notwithstanding this objection.

In view of our instant objection and our objection of July 23, 1971, to the anti-single shot provision of Act No. 91, 1971 Special Session of the Alabama Legislature, neither numbered posts nor a prohibition against single shot voting may be used in the Talladega, Alabama, municipal elections. See, e.g., United States v. Cohan, 358 F. Supp. 1217 (S.D. Ga. 1973); United States v. Garner, 349 F. Supp. 1054 (S.D. Ga. 1972).

Because the Attorney General is charged under the Voting Rights Act with the responsibility for taking necessary legal action to insure compliance with the Act, he therefore requests that you advise this Department within 30 days of the date of this letter as to the steps the City of Talladega intends to take to comply with the Act and this letter of objection.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

APR 10 1975

Mr. Frank B. Parsons
City Attorney
City of Fairfield
Post Office Drawer 437
Fairfield, Alabama 35064

Dear Mr. Parsons:

This is in reference to the six annexations which were submitted to the Attorney General by the City of Fairfield pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was completed on February 13, 1975.

The Attorney General does not interpose an objection to five annexations, i.e., those accomplished pursuant to Ordinance Numbers 460 (1965), 461 (1965), 484 (1966), 512 (1969) and 514 (1969). 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 such provisions.

We have given careful consideration to the annexation accomplished pursuant to Ordinance Number 563 (1973) and the supporting information obtained from the city and other interested parties. On the basis of our analysis we have concluded that the City of Fairfield has failed to satisfy its burden of proving that the subject annexation does not have the effect of abridging the right to vote on account of race or color.

Our analysis took into consideration a number of factors which can be summarized as follows: The City of

- 2 -

Fairfield presently elects 12 councilmen on an at-large, majority vote basis with numbered post and residency requirements. The annexed area in question contains an apartment complex of 230 units, the great majority of which are or are likely to be inhabited by white persons. Based upon 1970 census data, the subject annexation decreased the total black population of the city from approximately 48% to 46%. The issue is whether this reduction has a discriminatory effect on voting within the meaning of the Voting Rights Act of 1965. Where, as here, voter registration is fairly evenly divided between the races, there is a pattern of racial bloc voting and the election statistics for the most recent municipal elections in 1972 demonstrate relatively narrow margins of victory by white over black candidates, the addition of a few hundred white voters can have a significant diluting impact on black voting strength. In view of such circumstances, I am unable to find, as I must under Section 5, that the change in question does not have a racially discriminatory effect and therefore I must, on behalf of the Attorney General, interpose an objection to its implementation.

We are aware of the order by United States District Court Judge Sam C. Pointer to reapportion the city into single-member districts. Nevett v. Sides, C.A. No. 73-529 (N.D. Ala.). A reapportionment plan of this nature which satisfies the requirements of the Fourteenth and Fifteenth Amendments would effectively eliminate the adverse racial effect occasioned by the subject annexation under an at-large electoral system. For that reason, the Attorney General will consider the withdrawal of his objection once a constitutionally satisfactory reapportionment plan has been approved by the federal court.

I wish to stress that this ruling relates only to the voting changes occasioned by the annexation. The

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objection to the implementation of the annexation does not affect the validity of the annexation itself.

Of course, as provided by Section 5, you have an alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the changes do not have the purpose or will not have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

D.J. 106-012-3
V3168; V3169

JUL 1 1975

Honorable Harold L. Davenport
Mayor, City of Alabaster
P. O. Box 177
Alabaster, Alabama 35007

Dear Mayor Davenport:

This is in reference to the 11 annexations to the City of Alabaster, Shelby County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was completed on May 8, 1975.

In examining annexations under Section 5 of the Voting Rights Act, it is incumbent on the Attorney General to determine whether the annexations, either in purpose or effect, result in racial discrimination in voting. In making this evaluation we apply the legal principles which the courts have developed in the same or analogous situations. Moreover, it is also significant that Section 5 only prohibits implementation of changes affecting voting and provides that such changes may not be enforced without receiving prior approval by the Attorney General or by the District Court for the District of Columbia. Our proper concern then is not with the validity of the annexations but with the changes in voting which proceed from them.

Based on the 1970 Census data regarding the City of Alabaster, and the data regarding the annexations included in your submission and the information which you supplied, the Attorney General will interpose no objection to those annexations of areas which are not

- 2 -

populated (annexation numbers 2, 7, 9 and 11) since the addition of these areas do not affect voting within the City of Alabaster. Nor will objection be interposed to annexation number 13, since the effect of that annexation on voting in the City of Alabaster appears not to adversely affect blacks' voting rights.

The remaining 6 of the 11 annexations were considered to be of major importance in the context of all the submitted annexations, and were carefully examined in the light of federal court decisions which have involved questions of annexations' racially dilutive effect where political subdivisions conduct elections on an at-large basis. City of Richmond v. United States, 43 U.S.L.W. 4685 (June 24, 1975); City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972) aff'd 415 U.S. 902 (1973). Under the procedural guidelines for the administration of Section 5 the burden of proving that changes affecting voting have no racial purpose and have had or will have no racial effect lies with the submitting authority. Georgia v. United States, 411 U.S. 526 (1973); City of Richmond v. United States, supra; City of Petersburg v. United States, supra.

According to the data we examined the major annexations under consideration now include 1170 white people and no black people to the City of Alabaster, and there is no possibility of future annexation of areas with commensurate black population. Our information regarding elections in the city demonstrates that the city elects its councilmen at-large with a majority requirement and a numbered post system, and that there is a pattern of racial bloc voting in city elections. Moreover, the information we examined indicates that blacks are located within the City of Alabaster in a cognizable residential area.

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Under these circumstances, commensurate with the decisions cited above we cannot conclude that the major annexations taken together will not have a dilutive effect on voting in Albaster. Accordingly, I must on behalf of the Attorney General interpose an objection to the submitted annexation numbers 1, 3, 4, 5, 6 and 8.

In City of Petersburg v. United States, supra, the court stated at page 1931:

The Court concludes then . . . in accordance with the Attorney General's findings, that this annexation can be approved only on the condition that modifications calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters are adopted, i.e., that the plaintiff shift from an at-large to a ward system of electing its city councilmen.

In City of Richmond v. United States, supra, at 4868, the court said:

Petersburg was correctly decided. On the facts there presented, the annexation of an area with a white majority, combined with at-large councilmanic elections and racial voting, created or enhanced the power of the white majority to exclude Negroes totally from participation in the governing of the city through membership on the city council. We agreed, however, that that consequence would be satisfactorily

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obviated if at-large elections were replaced by a ward system of choosing councilmen. It is our view that a fairly designed ward plan in such circumstances would not only prevent the total exclusion of Negroes from membership on the council but would afford them representation reasonably equivalent to their political strength in the enlarged community.

In this connection, should the city undertake to elect its councilmen from single-member districts the Attorney General will reconsider his determination in this matter. We note that it is our understanding that the establishment of single-member districts in Alabaster was a topic of discussion in the city prior to the most recent city elections, and that the use of such districts continues to be a matter of interest to present city officials.

As you know, the city's 11 annexations were submitted simultaneously under Section 5 despite the fact that the individual annexations were accomplished throughout the years 1971, 1972 and 1973. I am not unmindful of the fact that our consideration under Section 5 regarding the individual annexations may have resulted in a judgment different from that announced above, had each annexation been submitted promptly upon its completion. However, once confronted with the simultaneous submission of 11 annexations, and faced with the question of whether an impermissible dilution under the law has occurred in Alabaster as the result of annexation, we have no alternative but to examine the population of the annexed territory as of the time of submission and to collectively consider the annexations to determine their effect under judicially enunciated standards.

- 5 -

As set out in the Section 5 guidelines, 28 C.F.R. 51.23 and 51.24, we will examine any information not previously available to you, or any facts which we may not have considered, in support of a request to reconsider the objection interposed above, including such information as the results of any studies or other documentation regarding the feasibility of creating councilmanic districts in the City of Alabaster.

Of course, as provided by Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these annexations have neither the purpose nor effect of denying or abridging the right to vote on account of race or color. However, until such a judgment is rendered by that court, or until the objection has been withdrawn by the Attorney General, the legal effect of the objection by the Attorney General is to render the annexations in question legally unenforceable insofar as they affect voting in the City of Alabaster.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

D.J. 166-012-3
V7007

SEP 12 1975

Mr. J. Howard McHenry, Jr.
City Attorney
City of Bessemer
Post Office Box 236
Bessemer, Alabama 35020

Dear Mr. McHenry:

This is in reference to the 45 annexations to the City of Bessemer which were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 as amended. Your submission was completed on July 14, 1975.

In examining annexations under Section 5 of the Voting Rights Act, it is incumbent on the Attorney General to determine whether the annexations, either in purpose or effect, result in racial discrimination in voting. In making this evaluation we apply the legal principles which the courts have developed in the same or analogous situations. It is also significant that Section 5 only prohibits implementation of changes affecting voting and provides that such changes may not be enforced without receiving prior approval by the Attorney General or by the District Court for the District of Columbia. Our proper concern then is not with the validity of the annexations as such but with the changes in voting which proceed from them.

With this understanding of the Attorney General's role under Section 5 in mind, I can advise you that the Attorney General does not interpose an objection to 38 of the annexations submitted. Our analysis reveals that

- 2 -

those 38 annexations, set forth in Appendix A to this letter, involve either areas that are not populated or areas the populations of which have at most a de minimus effect on minority voting strength.

With regard to the other 7 annexations under submission, listed in Appendix B attached, we cannot reach a like conclusion. We have given careful consideration to those annexations, the supporting information afforded by the city and other interested parties, and recent federal court decisions which have involved the question of the racially dilutive effect of annexations where political subdivisions conduct elections on an at-large basis. City of Richmond v. United States, 43 U.S.L.W. 4865 (U.S. June 24, 1975); City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972) aff'd 410 U.S. 962 (1973). On the basis of our analysis, we have concluded that the City of Bessemer has failed to satisfy its burden of proving that the 7 annexations listed in Appendix B do not have the effect of abridging the right to vote on account of race or color.

Our evaluation took into consideration a number of factors which can be summarized as follows. The City of Bessemer has a three-member commission form of government which is elected at-large with numbered posts and majority vote requirements. In 1960, black persons represented 57.4% of the city's total population and 52.4% of the voting age population, according to the 1960 Census.

From 1964 to 1970 there was a total of 18 annexations to the City of Bessemer, one of which has not been submitted for Section 5 preclearance. Of the twelve submitted annexations which actually involved population increases, only two contained black persons

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and those represented a negligible increase in the black population. Based upon household data provided by the city and using the average number of persons per household according to the 1970 Census, we find that approximately 4,791 whites and approximately 74 blacks were added to the population during this period.

Our analysis shows that the cumulative effect of the 4 pre-1970 submitted annexations, along with the unsubmitted annexation accomplished by Act No. 245 of the 1964 Alabama Legislature, was to contribute significantly toward a decrease in black population percentages. According to Census statistics blacks represented 57.4% of the city's population in 1960 but only 52.7% in 1970. The black voting age population dropped from 52.4% in 1960 to 47.1% in 1970. We find further that this reduction in black percentage was exacerbated by the relatively substantial all-white population additions occasioned by the 3 post-1970 submitted annexations listed in Appendix B.

I am mindful of your view that the annexation resulting from 1964 Act No. 245 is not a change required to be submitted under Section 5 and that no such submission of that annexation is intended. While we do not agree with your view on the coverage question, we have not considered Act 245 as having been submitted. Nevertheless, since the annexation there involved contained the largest of all the post-1964 additions to the city's population, that factor of necessity forms a significant portion of the context in which we must analyze the dilution issue in this case.

Another factor which we must consider in reviewing serial annexations, particularly where there is a number of all-white or majority-white annexations, is

- 4 -

whether there are minority communities outside the city limits which have sought, or are interested in, but have been unsuccessful in being annexed to the city. In the course of our review, it has come to our attention that there are indeed several such areas, e.g., Carver-Robertstown, Pipe Shop, Hillside Homes, "Northside" (identified as an area between the city limits and the Braswell housing project), Paula Hill, Muscoda and Old Jonesboro, which are either immediately adjacent to the city's corporate limits or nearby.

The City of Bessemer has represented that none of the black areas has satisfied the legal requirements necessary for annexation to the city. Black persons with whom we have spoken have made allegations, which we are presently unable to conclusively prove or disprove, that these areas have been treated in a racially discriminatory manner over the past years and that they have been denied annexation to the city because of the race and/or economic status of the areas. However, we believe it is of some consequence that the great majority of annexations of white areas have been achieved apparently with a minimum of, if any, difficulty.

In view of the foregoing considerations, we cannot conclude, as we must under the Voting Rights Act, that the 7 annexations reflected on Appendix B do not have a significant dilutive effect on black voting strength. I must, therefore, on behalf of the Attorney General, interpose an objection to those 7 annexations.

I am not unmindful that our consideration under Section 5 regarding the individual annexations may have resulted in a different conclusion had each annexation been submitted promptly upon its completion. However,

- 3 -

once confronted with the simultaneous submission of multiple annexations, and faced with the question of whether an impermissible dilution under the law has occurred as the result of those annexations, it is incumbent upon us to examine the population of the annexed territory as of the time of submission and to consider collectively the annexations to determine their total effect under judicially enunciated standards.

In connection with this determination, however, we note that the Supreme Court has recently ruled that annexations which otherwise impermissibly reduce a racial group's political strength in a community do not necessarily violate Section 5 if the post-annexation electoral system fairly recognizes the minority's political potential or steps are taken to neutralize the adverse racial effects occasioned by the annexations. City of Richmond v. United States, 43 U.S.L.W. 4865 (U.S. June 24, 1975). The litigation there, as well as that involved in City of Petersburg v. United States, supra, considered that one such remedy might be the adoption of a fairly drawn system of single-member wards for the election of the representative governing body.

I note that there is now pending a lawsuit in the United States District Court for the Northern District of Alabama which challenges the at-large method of electing the Bessemer City Commission. Pursuant to our policy where the substance of objections under Section 5 bears an apparent relationship to issues or questions of relief in pending cases, I am taking the liberty of sending a copy of this letter to that Court.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

D.J. 166-012-3
V9991

DEC 12 1975

Mr. Kent Brunson
Assistant Attorney General
State of Alabama
Montgomery, Alabama 36130

Dear Mr. Brunson:

This is in reference to Act No. 698, 1975 Alabama Legislature, dealing with changes in the manner of electing city commissioners in Phenix City, Alabama, which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 as amended. Your submission was received on October 13, 1975. Although we have noted your request for expedited consideration of this submission pursuant to 28 C.F.R. §51.22, we have been unable to reach a determination in this matter until the present time.

In examining, under Section 5 of the Voting Rights Act, changes in the method by which members of a city commission are elected, it is incumbent upon the Attorney General to determine whether the changes, either in purpose or effect, result in a minimization or dilution of minority voting strength. In this instance, we have concluded that the staggered term requirement for the election of the Phenix City Commission which would result from Act No. 698 would have such an effect.

We have examined this matter carefully, including a consideration of the following factors. The population of Phenix City, according to the 1970 Census, is 25,281, 37% of which is black. The city's three-member governing body is elected on an at-large, majority vote basis, and single-shot voting is permissible. No black person has

- 2 -

ever been elected to the Phenix City Commission. It is our understanding that, recently, a coalition of black and white leaders in the city urged the adoption of a more representative electoral system which would give the city's sizeable minority group an opportunity to elect some representation of their own choice.

We also took into consideration the changes in the method of electing the City Commission which have occurred since the effective date of the Voting Rights Act of 1965. Significant to that consideration is the fact that, the adoption of the numbered post system authorized pursuant to Act No. 1173, 1971 Alabama Legislature, is unenforceable since the changes incorporated into that legislation has never met the preclearance requirements of Section 5. Thus the only presently enforceable method of electing the three city commissioners is on an at-large basis as resulting from the changes contained in Act No. 52, 1971 Alabama Legislature, which has met Section 5 requirements.

In our view, the reduction of the field of candidates which would result from the imposition of staggered terms would have the effect of limiting the potential for black voters to elect a candidate of their choice and thus would constitute an impermissible dilution of black voting strength. See Dunston v. Scott, 336 F. Supp. 206, 213, n. 9 (E.D. N.C. 1972). Under such circumstances, the Attorney General cannot conclude, as he must under Section 5, that the implementation of staggered terms for the Phenix City Commission will not have the effect of abridging or denying the right to vote on account of race or color. I must, therefore, on behalf of the Attorney General interpose an objection to the implementation of Act No. 698.

- 3 -

Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this plan has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color. However, until such a judgment is rendered by that Court, the legal effect of the objection by the Attorney General is to render Act No. 698 unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

JAN 16 1976

Mr. William T. Stephens
Assistant Attorney General
State of Alabama
Montgomery, Alabama 36104

Dear Mr. Stephens:

This is in reply to your submission of revisions in the state primary election law, Act No. 1196 (S. 1018) of the 1975 Session of the Alabama Legislature, to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on November 17, 1975.

We have considered carefully the submitted changes and supporting materials as well as information and comments received from other interested parties. On the basis of our review and analysis, the Attorney General does not interpose any objection to the changes involved, except insofar as set forth below. 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 such changes.

With respect to the changes contained in Sections 5 and 43 of the submitted legislation, the primary election day would be moved from May to the first Tuesday in September (after 1976) and political organizations not using primaries would have to submit the names of their

cc: Public File (Rm. 920) ✓
X0521

- 2 -

nominees by 5:00 PM on primary election day. However, other provisions of Alabama law require that such organizations hold their mass meetings, including those held for the purpose of selecting delegates to a nominating convention, on the same day the primary election is held (Sections 39 and 40). Also, Section 145 of Title 17 requires that nominees for the general election must be certified no later than 60 days prior to the general election. It would seem virtually impossible for organizations utilizing the mass meeting-convention method of nomination to comply with these requirements in selecting their candidates. In addition, in an instance such as 1976 (even though the new primary date would not be effective in 1976) nominees resulting from a mass meeting held on the date of the primary could not be certified to appropriate officials in compliance with Section 145 inasmuch as the primary election would be held less than 60 days from the date of the general election.

Since, according to our information, the National Democratic Party of Alabama, a virtually all-black political party, is the prime political party in Alabama which presently relies solely on the convention method of nomination, and in view of this confusing state of the law, we cannot conclude that these proposed changes will not have the effect of denying or abridging the right to vote on account of race or color.

In addition, our analysis shows that the repealer clause, Section 44, as it applies to the repeal of former Sections 373-394 of Title 17 of the Alabama Code, dealing with contested elections, creates a potential for adverse treatment of blacks. We understand that a bill concerning contested elections was being considered in the legislature simultaneously with the primary law

- 3 -

revisions, but that it did not come to passage, and will be considered again early in the 1976 session. Nevertheless, the net effect of the repeal provisions of Section 44 is to leave the state with no effective rules governing contested elections and, irrespective of whether inadvertence was the cause of this situation, the absence of such rules, so long as it continues, is a factor that must be considered by the Attorney General upon a submission under Section 5. In view of Alabama's history of racial problems in the voting area, particularly with respect to some county democratic executive committees, we cannot conclude that the deletion of rules and guidelines concerning contested elections will not have the effect of denying or abridging the right to vote on account of race or color.

For the foregoing reasons, therefore, I must, on behalf of the Attorney General, interpose an objection to Sections 5, 43 and 44 of Act No. 1196. 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 provisions neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race. However, until and unless such a judgment is obtained, the provisions objected to are unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

FEB 18 1976

Mr. O. W. Hancock
Chairman
Pickens County Democratic
Executive Committee
Carrollton, Alabama 35447

Dear Mr. Hancock:

This is in reference to the reapportionment of the Pickens County Democratic Executive Committee, which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on December 20, 1975.

After a careful examination of the submitted change, including consideration of demographic and geographic data, and comments from interested parties, we cannot conclude as we must under the Voting Rights Act, that the use of four multi-member districts combined with numbered posts utilized to elect members to the Pickens County Democratic Executive Committee, will not have a racially discriminatory effect. Recent Supreme Court decisions, to which we feel obligated to give great weight, indicate that the combination of the above features may have the effect of abridging minority voting rights in Pickens County. E.g., White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971). We note that the use of either single member districts or voting precincts (used previously to elect committee members), if fairly drawn and properly apportioned, might eliminate any racially discriminatory effect.

- 2 -

For the foregoing reasons, I must on behalf of the Attorney General interpose an objection to the combination of the multi-member districts and numbered post requirements. We have reached this conclusion reluctantly because we fully understand the complexities involved in devising a plan of this nature so as to satisfy the needs of the county and its citizens and simultaneously, to comply with mandates of the Federal Constitution and laws. We are persuaded, however, that the Voting Rights Act compels this result.

Because issues relating to this matter are presently pending before the United States District Court for the Northern District of Alabama in Corder v. Kirksey, Civil Action No. 73-M-1086 (N.D. Ala.), I am taking the liberty of providing the Court with a copy of this response. Of course, Section 5 permits seeking approval of all changes affecting voting by the United States District Court for the District of Columbia irrespective of whether the changes have previously been submitted to the Attorney General.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

FEB 20 1976

Mr. William T. Stephens
Assistant Attorney General
State of Alabama
Montgomery, Alabama 36104

Dear Mr. Stephens:

This is in reply to your submission of the Judicial Article Implementation Act (Act No. 1205, S.400) of the 1975 session of the Alabama legislature, to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on December 22, 1975.

We have considered the submitted changes and supporting materials as well as information and comments received from other interested parties. On the basis of our review and analysis, the Attorney General does not interpose any objection to the changes involved except Sections 4-113(b)(5) and 4-131(b). 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 such changes.

With respect to the change contained in Section 4-113(b)(5), Bibb and Hale Counties would be consolidated for the purpose of electing one district court judge. The result of such a consolidation would produce an electorate which would be approximately 49% black and therefore

- 2 -

dilute the voting strength of blacks in Hale County, which according to the 1970 Census, is 66.4% black (Hibb County is 27.9% black). Furthermore, the proposed combination of these counties into one district does not appear to be warranted by any compelling state interest, inasmuch as both of these two counties is larger than Bullock, Crenshaw, Greene, Henry and Lowndes Counties, each of which has a district court and Hale County is larger than four other counties, Cherokee, Conecuh, Lamar and Perry, each of which also has a district court. Thus, we cannot conclude that this change will not have the effect of denying or abridging the right to vote on account of race or color. Accordingly, I must interpose an objection to the implementation of the change provided for by Section 4-113(b)(5) of the Judicial Implementation Act. 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 this provision neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. However, until and unless such a judgment is obtained, the provision objected to is unenforceable.

With respect to Section 4-131(b) which provides for the abolition of the position of county solicitor, the Department has determined that the data sent to the Attorney General are insufficient to properly enable this Department to fulfill its responsibilities under Section 5. Accordingly, would you please assist us by providing the following information:

- 3 -

1. The names of those counties which have elected county solicitors.
2. The number of district attorneys and assistant district attorneys, by race.
3. The number of assistant district attorneys appointed, by race, since January 1, 1970, and by whom each was appointed.
4. The names of counties, if any, which have black district attorneys or assistant district attorneys.
5. The qualifications and criteria for appointment as a district attorney.

As you know, the Attorney General has a 60-day period to consider submissions pursuant to Section 5. This period will begin to run upon receipt of the additional information necessary to evaluate Section 4-131(b) of the Judicial Implementation Act.

If you have any questions, please do not hesitate to call James M. Fallon (202--739-3872), the attorney to whom this matter is assigned. When forwarding additional information relating to the above request, please refer to file number X1121.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

X1121-
4/5

MAR 2 1976

Mr. C. B. Arendall, Jr.
Hand, Arendall, Bedsole,
Greaves & Johnston
Attorneys at Law
P. O. Drawer C
Mobile, Alabama 36601

Dear Mr. Arendall:

This is in reply to your letter of December 30, 1975, in which you submitted to the Attorney General Act No. 823 (S. 138) of the 1965 Regular Session of the Alabama Legislature, pursuant to Section 5 of the Voting Rights Act of 1965. Your letter and the attached materials were received by this Department on January 2, 1976.

We have considered the submitted changes and supporting materials as well as information and comments received from other interested parties. On the basis of our review and analysis, the Attorney General does not interpose any objection to the changes involved, except insofar as set out below. 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 such changes.

cc: Public File (Rm. 920)

- 2 -

With respect to the change contained in Section 2 of Act 623, the assignment of specific administrative functions is a change from the prior system of collective responsibility of all three commissioners for all administrative functions and as such constitutes a change affecting voting within the meaning of Section 5 of the Voting Rights Act. We understand that the method of electing Commissioners both before and after Act No. 623 contained at large, numbered posts, and majority vote requirement features.

According to 1970 Census data Mobile has a population which is over 35% black. We understand that this substantial minority population is concentrated mainly in one area of the City. In addition, Mobile has a history of racial discrimination in general and our information suggests that a pattern of racial bloc voting exists.

Recent court decisions, to which we feel obligated to give great weight, suggest that an at large voting system in the context of such features as numbered posts and majority vote, has the potential for diluting the voting strength of cognizable racial minority groups. See Whitcomb v. Chavis, 403 U.S. 124 (1971); White v. Regester, 412 U.S. 755 (1973). We understand it to be the City's position that the change in Section 2 assigning specific administrative functions to each commissioner locks the city into use of the at large system of electing those commissioners since it would not be appropriate to permit a particular area of the City (as under a ward system of election) to have the exclusive right to elect a commissioner who would be responsible for administering functions for the whole city, for example, public safety.

- 3 -

In view of this interpretation that Section 2 rigidifies use of the at large system, incorporating as it does the numbered post and majority vote features, and in view of history of racial discrimination and evidence of racial bloc voting in Mobile, we are unable to conclude, as we must under the Voting Rights Act, that Section 2 of Act No. 623 will not have the effect of denying or abridging the right to vote on account of race or color.

Likewise, we are unable to reach such a conclusion with respect to Section 12 of Act No. 623. That section provides that, upon acceptance in a referendum, the form of government for Mobile will be a mayor and seven member council, elected at large to numbered posts. While we understand that two referenda have been held unsuccessfully on the adoption of this form of government, we also understand that Section 12 is still extant and would be implementable, from the City's standpoint, if a referendum were successful in the future. Under those circumstances, and in view of our foregoing discussion of the potential effect on black voting strength that the use of such an at large voting system would have in the context of Mobile, we similarly are unable to conclude that the change embodied in Section 12 will not have the proscribed effect.

Accordingly, I must, on behalf of the Attorney General interpose an objection to Sections 2 and 12 of Act No. 623. 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 the features of this submission here objected to neither have the

- 4 -

purpose nor will have the effect of denying or
abridging the right to vote on account of race.
However, until and unless such a judgment is obtained,
Sections 2 and 12 are legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

MAR 5 1976

Mr. Martin Ray
McQueen, Ray & Allison
Attorneys at Law
P. O. Box 65
Tuscaloosa, Alabama 35401

Dear Mr. Ray:

This is in reference to the reapportionment of the Pickens County Board of Education (effected by Act No. 72 of the 1975 Alabama Legislature), which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on February 16, 1976.

First, we note that Act No. 41 of the 1966 Alabama Legislature, under which legislation the Pickens County Board of Education was previously apportioned, has never met the preclearance requirements of Section 5. We further note that prior to 1966, the Pickens County Board of Education elected five members from five single member districts.

Turning to the merits of this submission, on the basis of our consideration of the relevant demographic and geographic data, and comments from interested parties, we cannot conclude as we must under the Voting Rights Act, that the election of the Pickens County Board of Education on an at-large basis combined with a majority vote requirement, numbered posts, and staggered terms, will not have a racially discriminatory effect. Recent Supreme Court decisions, to which we feel obligated

- 2 -

to give weight, indicate that the combination of the above features may have the effect of abridging minority voting rights in Pickens County. E.g., White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971). We note that the use of single member districts (used previously to elect school board members), if fairly drawn and properly apportioned, might eliminate any racially discriminatory effect.

For the foregoing reasons, I must on behalf of the Attorney General interpose an objection to the combination of at-large election system, majority vote, numbered post and staggered term requirements. We have reached this conclusion reluctantly because we fully understand the complexities involved in devising a plan of this nature so as to satisfy the needs of the county and its citizens and simultaneously, to comply with the mandates of the Federal Constitution and laws. We are persuaded, however, that the Voting Rights Act compels this result.

Because issues relating to this matter are presently pending before the United States District Court for the Northern District of Alabama in Corder v. Kirksey, Civil Action No. 73-M-1066 (N.D. Ala.), I am taking the liberty of providing the Court with a copy of this response. Of course, Section 5 permits seeking approval of all changes affecting voting by the United States District Court for the District of Columbia irrespective of whether the changes have previously been submitted to the Attorney General.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

MAILED 1976

Hydr 9 176

Mr. John W. Johnson, Jr.
Johnson and Avary
Attorneys at Law
201 Johnson Building
P. O. Drawer 409
Lanett, Alabama 36863

Dear Mr. Johnson:

This is in response to your letter of December 18, 1975, in which you completed the submission to the Attorney General of Act No. 475 (H. 304) of the 1973 regular session of the Alabama Legislature pursuant to Section 5 of the Voting Rights Act of 1965. Your letter and the attached materials were received on January 8, 1976.

The Attorney General does not interpose any objection to the reapportionment of Chambers County nor to the creation of a fifth commissioner's district.

However, after carefully considering the proposed change, the supporting material and information obtained from interested citizens, we are unable to conclude, as we must under the Voting Rights Act, that the at-large feature of the method of nominating and electing commissioners will not have the effect of denying or abridging the right to vote on account of race or color. I must, therefore, on behalf of the Attorney General, interpose an objection to this aspect of the plan.

- 2 -

Prior to the change, it is our understanding that pursuant to Act No. 271 (H. 1049) of the 1915 session of the legislature, Local Laws of Alabama, 1915, p. 133, county commissioners were nominated by means of a primary held on a district basis, but elected at-large. It is our further understanding that nomination in the primary is tantamount to election but that under the change in Act No. 475 nomination by the district primary is eliminated and all elections will be at-large.

Under the circumstances involved, we conclude that the deletion of district contests in the primary is dilutive of minority voting strength. We reach this conclusion because ~~that~~ two of the proposed districts, namely, Districts 1 and 2, constitute or approximate black majorities, and thus not allowing these districts to select candidates for the county commission but having all candidates selected at-large, reduces the minority voting strength in these districts from 57% in District 1 and 49% in District 2 to 34%, which is the county-wide percentage of blacks according to the 1970 census. We are constrained by judicial precedent to conclude that such a dilution violates the voting rights of minorities in Chambers County, Graves v. Barnes, 343 F. Supp. 704 (W.D. Tex., 1972), aff'd. sub. nom. White v. Regester, 412 U.S. 755

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 the at-large nomination provision of Act No. 475 neither has the effect nor the purpose of denying or abridging the right to vote on account of race. However, until and unless such a judgment is obtained, the at-large provision of Act No. 475 remains unenforceable.

- 3 -

Finally, in reviewing this submission, we note that the 1971 regular session of the Alabama legislature passed Act No. 2001 (H. 2308), Acts 1971, p. 3241. While a copy of this statute was attached to your letter of December 18, 1975, our records do not reflect that this change has been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973. Inasmuch as Act No. 2001 provides for the same changes as Act No. 475, the objection noted above also applies to Act No. 2001.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

D.J. 166-012-3
X1839-41

MAR 10 1976

Mr. John W. Johnson, Jr.
Johnson and Avery
Attorneys at Law
P. O. Drawer 409
Lanett, Alabama 36963

Dear Mr. Johnson:

This is in response to your letters of December 31, 1975 and January 16, 1976, in which you submitted to the Attorney General Acts Nos. 118, 414 and 843 of the 1975 Regular Session of the Alabama Legislature pursuant to Section 5 of the Voting Rights Act of 1965. Your letters and the attached materials were received on January 17, 1976.

We have considered carefully the submitted changes and supporting materials as well as Census data and information and comments received from other interested parties. On the basis of our review and analysis, the Attorney General does not interpose any objection to Act No. 118, which provides for a reidentification of voters in Beat 7 of Chambers County, and Act No. 414, which provides for the appointment of clerks in the probate office of Chambers County to assist the board of registrars by taking applications for voter registration. 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 submitted changes.

- 2 -

We are not able to reach a like conclusion with respect to Act No. 843. That legislation creates two districts from which members of the County Board of Education are to be elected. District 1 is to have three members resident therein and District 2 is to have two resident members, all to be elected at-large from the county, with the use of numbered posts, a majority vote requirement, and staggered terms. It is our understanding that the former (pre-1975) method of electing school board members consisted of four single-member districts and one at-large seat, with staggered terms. It is our further understanding that as a result of population growth in the southeastern corner of the county, known as "the valley," these former districts were malapportioned.

According to the 1970 Census, Chambers County is approximately 34.8% black. However, the area which constitutes District 2 in the submitted plan is approximately 54% black, while District 1 (Beats 7 and 13) is approximately 25% black. Thus, to require candidates to run at-large county-wide decreases, from a 54% majority in proposed District 2 to a 34.8% minority in the county, the potential of blacks to elect a candidate of their choice. In our view such minimization is dilutive of black voting strength. The numbered posts, staggered terms, and majority vote requirement tend further to highlight the dilutive effect of the at-large proposal. In a county such as Chambers, which we understand has a history of racial discrimination and a pattern of racial bloc voting, such a dilution denies blacks a realistic opportunity to participate in the political process. White v. Regester, 412 U.S. 755 (1973). Accordingly, we cannot conclude, as we must under the Voting Rights Act, that the at-large, numbered post, majority vote and staggered terms requirements will not have the effect of denying or abridging the right to vote on account of race or color.

- 3 -

For the foregoing reasons, therefore, I must on behalf of the Attorney General, interpose an objection to the at-large, numbered posts, majority vote, and staggered term features of Act No. 843 of 1975. The Attorney General, however, does not interpose any objection to the reapportionment (two districts) or residency requirement features of this submission. 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 provisions neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race. However, until and unless such a judgment is obtained, the provisions objected to are unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

D.J. 166-012-3
V6804

APR 23 1976

Mrs. Sue W. Seale
Hale County Board of Registrars
Hale County Courthouse
Greensboro, Alabama 36744

Dear Mrs. Seale:

This is in reference to the change in the method of electing members of the "board of revenue, court of county commissioners, or other like governing body" in Hale County as provided for in Act No. 1092 of the 1969 Alabama Legislature, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act.

Your request for review was received initially on July 25, 1974. By letter dated September 20, 1974, we advised you that the information received to that point was not sufficient to complete your submission and requested additional information to enable us to properly evaluate the change. Our request sought, among other data, a description of the prior method of electing each group of county officials affected by the change and a breakdown of the population of each commissioner district by race. The information we requested was never received and on October 21, 1975, you informed agents of the Federal Bureau of Investigation that you had provided all information available to you. On March 25, 1976, during a telephone conversation with Departmental attorney Michael Scadron, you advised that prior to January 1965 the Hale County commissioners were elected from single-member districts but that now such districts are used only for residency requirements

- 2 -

and commissioners are elected by the voters in the county at-large. Also during that conversation, Mr. Scadron represented that we would attempt to evaluate your submission with the information now provided.

During the course of our review of the submission Mr. James Fallon of this Division spoke with you again on April 21, 1976. At that time you advised Mr. Fallon that the Board of Revenue (predecessor to the county commission) minutes of a January 1966 meeting reflect that that body voted at that time to have at-large elections instead of the former single member districts and that such at-large elections were in fact held beginning in May 1966.

In view of this additional information we are now able to consider your submission complete insofar as the change from district elections to at-large elections is concerned. Thus, we turn to a consideration of the merits of that change.

In examining changes in voting procedures under Section 5 of the Voting Rights Act, it is incumbent on the Attorney General to determine whether the changes, either in purpose or effect, result in racial discrimination in voting. Under Section 5 the burden of proving that changes affecting voting have no racial purpose and have had or will have no racial effect lies with the submitting authority. Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19.

- 3 -

According to the data we examined, the southern portion of Hale County is more heavily black than the northern portion and voting beats in Commissioner District 3 to the south are predominantly black. Our information further demonstrates that there is a pattern of racial bloc voting in Hale County and that no black has ever been elected to county-wide office.

Based on our evaluation of the change from single-member districts to at-large election of commissioners, which included examination of geographic and demographic data and comments from interested parties, we cannot conclude as we must under the Voting Rights Act that that change has neither the purpose nor the effect of diluting the voting strength of the black community in Hale County. Accordingly, I must on behalf of the Attorney General interpose an objection to the submitted change to at-large election of members of the Hale County Commission.

During the course of your conversation with Mr. Fallon you also indicated that it had been your intent to submit the redistricting of the four commissioner districts used since 1966 for residency purposes. You further mentioned that those districts were enacted into law by Act 620, H1717, 1973 Alabama Legislature, and that this redistricting was done by Western Alabama Planning (Mr. Lewis McRae).

As indicated in our prior correspondence on this matter, the information you have furnished on this aspect of your submission is insufficient for the Attorney General to make a determination. While these districts now become ineffective as residency districts under the at-large election system which

- 4 -

is unenforceable because of the Attorney General's objection, upon a completed submission of those districts we will evaluate them should the county decide to utilize them as single member districts from which commissioners are to be elected in the future. To complete the submission in that regard, we will need the following information:

1. A copy of Act 620 (H.1717) (p. 925 Regular and Special Session of Alabama Legislature, Volume II, 1973).
2. Copies of any written instructions, a statement of oral instructions given to Western Alabama Planning, Inc. with respect to the county's goals or guidelines to be used in redistricting.
3. Copies of all materials, including maps, charts, and other data provided to the county by Western Alabama Planning, Inc.
4. Whether there was input from minorities or minority groups in adopting the 1973 redistricting, and if so, the minority person's name(s).
5. A map indicating the commissioner district lines prior to 1973.

Irrespective of the action that may be taken with respect to the redistricting, however, unless and until a declaratory judgment from the United States District Court for the District of Columbia that the change from district to at-large election has neither the purpose nor effect of denying or abridging the right

- 5 -

to vote on account of race or color is obtained, the legal effect of the objection by the Attorney General to the change to at-large elections is to render that change legally unenforceable. Accordingly, and since elections are scheduled for some of the commission positions during the May 4 primary, we request that you advise us by April 28, 1976, of the steps the county will take with respect to the conduct of that election.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

JSP:AJK:rjs
DJ 166-012-3
Y6341

JUL 6 1976

Mr. Vincent McAlister
Almon, McAlister & Ashe
Attorneys at Law
Post Office Drawer 8
Sheffield, Alabama 35660

Dear Mr. McAlister:

This is in reference to the change in form of government for the City of Sheffield, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on May 5, 1976.

The Attorney General does not interpose any objection to the change to a mayor-council form of government. We feel a responsibility to point out, however, that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

In reference to the proposed method of electing councilmen under the new form of government, the Attorney General has no objection to the proposed district lines or to the at-large election of the mayor and the president of the council. We are, however, unable to conclude that the at-large election of councilman ~~required to reside~~ in districts will not have a racially discriminatory effect. Recent court decisions, to which we feel obligated to give great weight, indicate that the use of residency requirements, numbered posts, and a majority vote requirement in the context of at-large elections has the potential for abridging minority voting rights. See White v. Regester, 412 U.S. 755 (1973), Whitcomb v. Chavis, 401 U.S. 124 (1971).

J. Stanley Rosenberg
Assistant Attorney General
State Rights Division

Sincerely,

Accordingly, on behalf of the Attorney General,
I must interpose an objection to the implementation of
the proposed at-large method of electing city councilmen.
Please be advised that you may request the Attorney
General to reconsider his objection on the basis of
information not previously available that shows that the
new method of election does not have the effect of denying
or abridging the right to vote on account of race or color.
See 42 U.S.C. Section 51.11(b), 51.12 and 51.25. In
addition, as provided by Section 5 of the Voting Rights
Act, you have the right to seek a declaratory judgment from
the district court for the district of Columbia that this
method of election has neither the purpose nor the effect
of denying or abridging the right to vote on account of
race or color.

DEC 29 1976

DJ 166-012-3
V7804; X8956-58

Mr. W. McLean Pitts
Pitts, Pitts & Thompson
Attorneys at Law
P. O. Drawer 537
Selma, Alabama 36701

Dear Mr. Pitts:

This is in reference to Act 320 (1965), Act 2022 (1971), and Act 620 (1973) which provide for the method of electing the governing body of Hale County, Alabama. These acts were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on November 4, 1976.

In making a determination under the Voting Rights Act, we apply the legal principles developed by the courts in the same or analogous situations. We are aware that 66% of the population in Hale County is black and that the black population therefore constitutes a numerical majority. As the court stated in Graves v. Barnes, 343 F. Supp. 704, 730 (1972):

In the context of the Constitution's guarantee of equal protection "minority" does not have a merely numerical denotation; rather it refers to an identifiable and specially disadvantaged group.

In affirming the District Court's decision the Supreme Court stated in White v. Regester, 412 U.S. 755 (1973) that the test to be applied was whether such a minority had been excluded from effective participation

- 2 -

in political life. The Court held that such a finding was sufficient to sustain the District Court's decision that single-member districts were required.

Each of the submitted Acts provides for the governing body to be elected on an at-large basis as opposed to the previous method of electing by single-member districts. Our investigation has resulted in the conclusion that the black population of Hale County has been prevented from entering the political process in a reliable and meaningful manner. This is evidenced by the fact that in Hale County no black has ever been elected to county-wide office.

Under these circumstances, I am unable to conclude, as I must under the Voting Rights Act, that the use of an at-large election system in Hale County will not have the effect of discriminating on account of race. I must, therefore, on behalf of the Attorney General, interpose an objection to the implementation of Act 320 (1965), Act 2022 (1971), and Act 620 (1973). Of course, as provided by Section 5, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these Acts have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color.

Finally, in our April 23, 1976, letter of objection we suggested that should the county decide to use the present residency districts as single-member districts from which to elect its commissioners in the future we would evaluate them as such upon being furnished the additional information requested therein. While we note that you have responded to the request for additional information, there is no indication that the county has decided to use these districts as single-member districts. Consequently we have made no determination in that regard.

- 3 -

Pursuant to the court order in United States v. County Commission, Hale County, Alabama, et al. (Civ. Action No. 76-403-P), I am sending a copy of this letter to that court.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

DJ 166-012-3
A3009
A2991

DEC 27 1977

Mr. William T. Harrison
Harrison and Conwill
Attorneys at Law
Post Office Box 557
Columbiana, Alabama 35051

Dear Mr. Harrison:

This is in reference to Ordinance Nos. 132 and 133, which annex areas of land to the City of Alabaster, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Both submissions were received on October 25, 1977.

By letter of December 20, 1977, we informed you that the Attorney General would not interpose an objection to Ordinance No. 133. Since that time we have considered Ordinance No. 132 and, because both submissions involved annexations, we have found it necessary to reconsider our initial determination with respect to Ordinance No. 133.

You will recall that on July 7, 1975, an objection was interposed on behalf of the Attorney General to six annexations to the City of Alabaster, on the ground that these annexations impermissibly diluted minority voting strength. On May 3, 1976, we declined to withdraw this objection.

Ordinance No. 132 brings into the city approximately 20 acres of land. We understand that houses are under construction at this time on part of the land, that these houses are in a fairly expensive price range, and that the area is located next to a white residential area in the city. Ordinance No. 133 brings into the city

- 2 -

approximately 100 acres of land. We understand that it is expected to be developed residentially and that it is also adjacent to a white residential area of the city. Our information regarding elections in the City of Alabaster continues to demonstrate that the city elects its councilmen at-large with a majority requirement and a numbered post system, that there is a pattern of racial bloc voting in city elections, and that blacks are located within the city in a cognizable residential area. Under these circumstances, the annexations of potentially white residential areas may further dilute the vote of Alabaster's black population.

As we stated to you in our July 7, 1975, letter of objection and in subsequent letters in which the Attorney General refused to withdraw that objection, should the city undertake to elect its councilmen from single-member districts the Attorney General will reconsider his objections to this and previous annexations by the City of Alabaster.

In the meantime, however, the factors that led to our objection of July 7, 1975, prevent us from determining, as we must under the Voting Rights Act, that the instant annexations will not abridge the right to vote on account of race or color. Therefore, on behalf of the Attorney General, I must interpose objections to Ordinance Nos. 132 and 133. In regard to Ordinance No. 133, we have reconsidered our prior response to this submission under the provision of Section 5 of the Voting Rights Act, as amended in 1975, which provides that when the Attorney General affirmatively indicates that no objection will be made within the sixty day period following receipt of a submission, the Attorney General may reexamine the submission if additional information comes to his attention during the remainder of the sixty day period which would otherwise require objection in accordance with this section.

- 3 -

Of course, as provided by Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these annexations have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color. However, until such a judgment is rendered by that Court, or until the objections have been withdrawn by the Attorney General, the legal effect of the objections is to render the annexations in question legally unenforceable insofar as they affect voting in the City of Alabaster.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division .

DSD:DH:JAS:gmj
DJ 166-012-3
A3381

JUL 28 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. J. Gorman Houston, Jr.
Houston & Martin, P.C.
Attorneys at Law
Post Office Box 14
201 East Broad Street
Eufaula, Alabama 36027

Dear Mr. Houston:

This is in reference to Act No. 10, Acts of Alabama, 1965, and Act No. 171, Acts of Alabama, 1967, changing the method of electing members of the Barbour County Commission, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on May 30, 1978.

Prior to the 1965 legislation, six of the seven members of the governing body of Barbour County were elected from single-member districts and the seventh member was elected at-large. Under the 1965 legislation all members of the governing body were elected at-large and the districts were retained as residency districts only. The 1967 legislation reduced the size of the governing body from seven to five members and divided the county into four districts, with two members required to reside in districts one and one member in each of the other three districts. The positions for the first district were numbered. We have given careful consideration to these changes as well as to the supporting information you have provided, demographic data, comments from interested parties, and relevant court decisions.

We note that according to the 1970 census blacks constitute 46 percent of the population of Barbour County but that no blacks have been elected to the governing body under the at-large system of election. Our analysis indicates that some of the districts in use prior to the 1965 legislation and some of the districts adopted

- 2 -

In 1967 have black population majorities and that under a system of fairly-drawn districts satisfying one person, one vote requirements some districts with black population majorities could be expected to result. We also note that the at-large election system was adopted soon after the Voting Rights Act of 1965 enabled substantial numbers of blacks to participate in the electoral process for the first time. In this regard see Smith v. Paris, 237 F. Supp. 901 (M.D. Ala. 1966), affirmed, 386 F. 2d 797 (5th Cir. 1967), and United States v. Executive Committee of Barbour County, Alabama, 283 F. Supp. 943 (M.D. Ala. 1968). We also note that a majority vote is required for nomination, that numbered posts are used, and that terms are staggered, and our analysis indicates that voting in Barbour County is along racial lines. See White v. Regester, 412 U.S. 755 (1973), and Novett v. Sices, 571 F. 2d 209 (5th Cir. 1978).

Under these circumstances, and guided by the applicable legal standards—see Beer v. United States, 423 U.S. 130 (1974), City of Richmond v. United States, 422 U.S. 358 (1975), and Wilkes County, Georgia v. United States, C.A. No. 76-1045 (D.D.C. April 28, 1978)—the Attorney General is unable to conclude that the adoption of at-large elections effected by Act No. 10 (1965) and the modification of that at-large system effected by Act No. 171 (1967) do not have the purpose and have not had the effect of denying or abridging the right to vote on account of race or color. Accordingly, on behalf of the Attorney General, I must interpose an objection to Act No. 10 (1965) and Act No. 171 (1967).

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 the effect of denying or abridging the right to vote on account of race or color. However, until such a judgment is obtained, the effect of the objection by the Attorney General is to make these acts legally unenforceable. This includes, specifically, the holding of any primary or general election pursuant to them this year. Please notify me within ten days of your receipt of this letter of the steps that will be taken to comply with the requirements of Section 5. If you have any questions concerning this matter, please telephone Voting Section Attorney Sheila Delaney, at 202-739-4092.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

DJ 166-012-3
A6405

DEC 29 1978

Mr. Frank H. Hawthorne
Batch, Bingham, Baker
Hawthorne, Williams & Ward
First Alabama Bank Building
Post Office Box 751
Montgomery, Alabama 36102

Dear Mr. Hawthorne:

This is in reference to the incorporation of the Town of Hayneville, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on November 3, 1978.

In our review of changes in electoral systems we are guided by relevant judicial decisions. See Beer v. United States, 425 U.S. 130 (1976); City of Richmond v. United States, 422 U.S. 358 (1975); Gomillion v. Lightfoot, 364 U.S. 339 (1960). Under Section 5 the submitting jurisdiction has the burden of proving both that the change in question was not adopted with a discriminatory purpose and that its effect will not be discriminatory. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.19; Georgia v. United States, 411 U.S. 526, 538 (1973); City of Richmond, *supra* at 380-81 (Brennan, J., dissenting).

In our review of the Hayneville incorporation we have carefully considered the information you have provided as well as information provided by other interested persons. The relevant information before us can be briefly summarized as follows: According to the 1970 census, blacks constitute 77 percent of the population of Lowndes County, in which Hayneville is located. Prior to the passage of the Voting Rights Act in August 1965 few blacks in Lowndes County were registered to vote, but at the time of the incorporation, in 1967 and 1968, black political strength in the county was growing. Immediately prior to the incorporation, a substantial majority of the residents of the unincorporated community

known as Hayneville were black. Section 11-41-1 of the Alabama Code (1975) specifies the requirements and procedures by which "the inhabitants of an unincorporated community which has a population of not less than 75, constituting a body of citizens whose residences are contiguous to and all of which form a homogeneous settlement or community" may form a municipal corporation. The incorporated Town of Hayneville, however, includes only a portion of the contiguous, homogeneous community that existed. Not included within the boundaries of the Town were the residences of a substantial number of blacks, with the result that whites instead of blacks constitute a majority of the Town's electorate. We have been informed, moreover, that the boundaries of the Town were purposefully drawn to assure political control by whites of the Town.

Section 11-41-1 also provides that a quarter quarter section (or a portion thereof) can only be included in an incorporation if four qualified electors and the owners of 60 percent of the land sign a petition in support of inclusion. The information before us indicates that this requirement could have been met with respect to much of the land that was excluded from the Town.

Thus it appears that the purpose of the incorporation was to reduce the influence over Hayneville of the majority black Lowndes County electorate and to prevent the possibility of control of the Town of Hayneville by blacks residing within the Town. From the information before us it appears that this has been the effect of the incorporation. Under these circumstances, I am unable to conclude, as I must under the Voting Rights Act, that the incorporation of the Town of Hayneville has neither a discriminatory purpose nor a discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection pursuant to Section 5 to the incorporation.

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 the incorporation of the Town of Hayneville did not have the purpose and has not had the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request reconsideration of this objection by the Attorney General. However, until the judgment from the District Court is obtained or the objection withdrawn, the effect of the objection by the Attorney General is to make the incorporation legally unenforceable.

We note in this connection, that an expansion of the boundaries of the Town of Hayneville to include the entire contiguous, homogeneous community could provide the basis for the withdrawal of the objection by the Attorney General.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Town of Hayneville plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Voting Section Attorney David Hunter at 202-633-3849.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc: Congressman Bill Nichols
James Opp Smith, Esquire

DSD:DHH:LH:gml
DJ 166-012-3
COOK:7

FEB 26 1979

Honorable Fred L. Huggins
Judge of Probate, Clarke County
Courthouse
Grove Hill, Alabama 36031

Dear Judge Huggins:

This is in reference to Act No. 2446, Alabama Laws, 1971, page 3512, which provides for the at-large motion of election for the county commission of Clarke County, submitted to the Attorney General pursuant to Section 3 of the Voting Rights Act of 1965, as amended. Your submission was completed on December 27, 1978.

Under Section 3 Clarke County has the burden of proving that the at-large electoral system was not adopted with a discriminatory purpose and that the operation of the at-large system does not have a racially discriminatory effect. See Beer v. United States, 425 U.S. 130 (1974); Wilkes County v. United States, 456 F. Supp. 871 (D.D.C. 1978), affirmed, 67 U.S.L.W. 3351 (Dec. 4, 1978) (No. 78-70). See also 28 C.F.R. 31.9.

The county commission of Clarke County consists of four commissioners and the judge of probate, who serve four-year terms. A majority vote is required for nomination in the Democratic primary. Although blacks constitute 44 percent of the population of the county (according to the 1970 census), blacks have not been elected to the commission. Prior to the adoption of Act No. 2446 the four commissioners were elected from single-member districts. Our analysis indicates that one of these districts, Number 3, likely has a black population majority, and that a system of fairly-drawn single-member districts of equal population would probably contain at least one district in which blacks are in a substantial majority.

The county has presented no explanation of why it chose to adopt the at-large system as a means of complying with the one person, one vote requirement rather than reapportionment of its districts. Finally, our analysis of precinct election returns for the 1972 and 1976 primary elections and the 1976 run-off primary indicates that voting in Clarke County follows racial lines.

Under these circumstances I am unable to conclude, as I must under the Voting Rights Act, that the at-large method of election established by Act No. 2466 has neither a discriminatory purpose nor a discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection pursuant to Section 3 to the submitted method of election.

Of course, as provided by Section 3 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 the at-large election system established by Act No. 2466 does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 3 (28 C.F.R. 31.21 (b) and (c), 31.23, and 31.24) permit you to request reconsideration of this objection by the Attorney General. However, until the judgment from the District Court is obtained or the objection withdrawn, the effect of the objection by the Attorney General is to make the at-large method of electing members of the county commission of Clarke County legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action Clarke County plans to take with respect to this letter. If you have any questions concerning this letter, please feel free to call Voting Section Attorney Sheila Delaney at (202) 633-4052.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

Thomas H. Crawford, Jr., Esq.
Cooper, Mitch & Crawford
Suite 201 - 409 North 21st Street
Birmingham, Alabama 35203

1 FEB 1980

Dear Mr. Crawford:

This is in reference to the annexation of land to the City of Pleasant Grove, Jefferson County, Alabama, by Act No. 79-419 (1979) of the Alabama Legislature, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on December 3, 1979.

We have given careful consideration to the materials you have submitted, as well as information and comments of other interested parties. We note that the City of Pleasant Grove today contains some 6,500 persons, all of whom are white; that areas adjacent to the annexed area have been developed for exclusively white residential use; that similar development is planned for the annexed area, and that several identifiably black areas have petitioned for annexation to the City of Pleasant Grove, but that the city has taken no steps to annex those areas, despite the passage of a considerable length of time. We have also noted reports of activities indicating the presence of considerable antagonism toward black persons in the vicinity of Pleasant Grove.

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); 23 C.F.R. 51.19. See also Gomillion v. Lightfoot, 364 U.S. 339 (1960). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the annexation to the City of Pleasant Grove embodied in Act No. 79-419 (1979) of the Alabama Legislature.

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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 this change has 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. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection; such a reconsideration would be appropriate if and when the City of Pleasant Grove demonstrates that its annexation policy is free of racial selectivity. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the annexation legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action the City of Pleasant Grove plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Mr. John K. Tanner (202--724-7399) of our staff, who has been assigned to handle this submission.

Sincerely,

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division

cc: Lynda Knight, Esq.
Assistant Attorney General

28 APR 1980

W. McLean Pitts, Esq.
Pitts, Pitts & Thompson
Post Office Drawer 537
Selma, Alabama 36701

Dear Mr. Pitts:

This is in reference to the realignment of ward boundaries by the City of Selma in Dallas County, Alabama, submitted to the Attorney General pursuant to Section 3 of the Voting Rights Act of 1965, as amended. Your submission was received on February 26, 1980.

Under Section 3, the City of Selma has the burden of proving that the submitted change does not have the effect of producing a retrogression in the position of black voters in the City of Selma and that it does not transgress constitutional limits with respect to black voters. See Ball v. United States, 423 U.S. 130 (1975). See, also, 26 C.F.R. 201.15.

We have considered information provided by the City of Selma and the Bureau of the Census as well as by other interested parties. Our analysis reveals that in addition to evidence of a general pattern of racially polarized voting in the City of Selma, a black candidate lost election from Ward Three by a slim margin under the existing plan and that one effect of the proposed plan is to reduce the black population percentage of Ward Three. Our analysis has also shown that it is not difficult to devise a plan which remedies the malapportionment of the existing wards without decreasing the black population percentage in Ward Three. The adoption by the City of Selma of an electoral scheme that would maintain minority voting strength at a minimum

- 2 -

level, where alternate options would provide a fair chance for minority participation, is relevant to the question of an impermissible racial purpose in its adoption. See Wilkes County v. United States, 439 F. Supp. 1171 (D. D.C. 1975).

Under the circumstances, we are unable to conclude, as we must, under Section 5 that the submitted change does not have a racially discriminatory purpose or effect. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the implementation of the proposed redistricting for the City of Selma.

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 this change has 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. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the proposed redistricting plan for the City of Selma, Alabama legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter the course of action the City of Selma, Alabama plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Elda Gordon (202-724-6575), of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

I. Drayton Pruitt, Jr., Esq.
Pruitt and Pruitt
Post Office Drawer PP
Livingston, Alabama 35470

OCT 17 1980

Dear Mr. Pruitt:

This is in reference to Act No. 79-729 of the 1979 Regular Session of the Alabama Legislature which provides for the use of electronic voting systems in Sumter County, Alabama, and to the changes adopted by Sumter County pursuant to the provisions of this Act.

As you know, the Attorney General has sixty days in which to consider a submission pursuant to Section 5 of the Voting Rights Act of 1965, as amended. This sixty-day period begins when the Department has received all the information necessary for the proper evaluation of the change submitted. Further, the Attorney General may object to the proposed change consistent with the burden of proof placed upon the submitting authority (in this case the State of Alabama, with respect to the Act itself and Sumter County, with respect to changes adopted pursuant to the Act in question) to show that the submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. If the submitting authority fails to provide the Attorney General with the information necessary for the proper evaluation of the submission it fails to sustain its burden of proof. For the reasons set forth below, I have concluded that your burden has not been carried with respect to the instant submission. Thus, on behalf of the Attorney General, I must object to the submitted changes.

Our records indicate that this submission has had an unfortunate and confusing history which has prevented the normal flow of information that would enable the Attorney General to make a determination as to whether or not this change has the purpose or the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Because of this, we will continue our consideration of this matter upon your providing the information necessary for the completion of our review of the merits of the changes that appear to be involved.

To aid you in gathering the information necessary for our review, we here set out our understanding of the submitted Act; our understanding of the changes adopted by Sumter County pursuant to the provisions of the Act; the questions asked in our letter of October 23, 1979; the questions reiterated in our letter of January 1, 1980; and the confusion arising from the information you have provided, along with the information requested but which has not been provided to us:

1. Our understanding of Section 11 of Act No. 79-729 (1979) is that it provides, among other things, the following:

A. that Sumter County is exempt from the limitations (not enumerated) prescribed by law to other counties that undertake to use electronic voting systems;

B. that there shall be one polling place located within each beat;

C. that Sumter County is authorized to:

(1) abolish existing beats and discontinue the use of the polling sites located therein; or

(2) extend or redistrict a beat and retain a polling site therein; or

(3) subdivide a beat, thus creating an additional beat, and designate an additional polling site therein.

2. Our understanding is that Sumter County, as authorized above, chose to extend or redistrict beats, thus reducing the number of beats, and retained certain polling sites, one in each restructured beat.

3. On October 23, 1979 (copy of our letter enclosed), we requested that you provide us with information relating to how the procedures specified by the Act differ from those required by the general Alabama Election Law in counties using voting machines; how the procedures specified in the Act differ from those previously followed in Sumter County; whether or not the county had implemented the change to voting machines; a description of the county's plan to familiarize voters with the voting machines; and, specifically, an explanation of other changes that had been vaguely referred to or otherwise implied. Our letter stated as follows:

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In addition, your submission refers to the reduction of beats from 16 to 9 (source of these numbers is unknown). Please explain the reduction as it relates to the use of voting machines and how this change will affect county officials presently elected, along with a map of the previous boundary lines and the population and registered voters, by race, of each beat before and after the change.

If any polling places will be abolished, please indicate the locations of and the distances between the old and new polling places as well as how voters will be notified of the change.

4. In your response (letter dated November 26, 1979, a copy of which is also enclosed), you stated that the Act itself provided for a reduction in the number of beats; that "(p)reviously there were more beats in Sumter County and voting was by written ballot without use of machines;" that Sumter County has never used voting machines; that you were enclosing a map indicating the existing 16 beats and the reduction to 9 beats and the boundaries of each; that the only county officials who are elected by beats are the Constables, but that because the bonds of the individuals currently holding office had expired and had not been renewed, the offices were presently vacant, and you indicated, accordingly, "no-one will be affected;" that no plans had been initiated to notify voters "but we would be happy to take suggestions of the Justice Department...;" that you would be unable to provide us with "a percentage of black and white voters in each beat" but that you were enclosing "Exhibit 'A'" which would indicate the percentage of votes received by the black and the white candidates in each beat during the Democratic Primary of 1978; and that "(i)f this Legislation is approved and enacted by the Alabama Legislature, then these voting machines will be used for the first time in the next Presidential general election." However, your response failed to provide information that we previously requested concerning the following:

A. How the procedures specified by the Act differ from those required by the general Election law in counties using voting machines;

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B. How the procedures specified by the Act differ from those previously followed in Sumter County (i.e., changes in the number of voting boxes, changes in the method of assigning voters to their voting sites, etc.);

C. An explanation of the relationship between the number of beats and the method of electing county officials (i.e., do members of the county commission run from districts that are changed by a reduction in the number of beats; if and when individuals seeking to apply for or to renew "bonds" in order to run for the office of Constable, how will they be affected by a reduction in the number of beats; what other state, district, county or political party offices are voted on by voters in Sumter County that are affected by a reduction in the number of beats and how are they affected?);

D. The number of registered voters of each beat before and after the change even if racial breakdowns are unavailable; and

E. If any polling places would be abolished, the locations of and the distances between the old and new polling places.

Further, your response raised several additional questions: The letter states that the map enclosed indicates the existing 16 beats and the reduction to 9 beats while the lines on the map appear to delineate 18 previous beats now reduced to 10. In fact, the numbers on the map suggest that there used to be 20 beats. Were two beats deleted -- was this change subject to the preclearance requirements of Section 5 and, if so, was such preclearance sought? How are voting boxes affected? How can the proposed changes not affect the offices of at least seven Constables? Which constables are deleted? Where, in the cities circled on the map, are the polling places located? Are these entirely new polling places or are they "remaining" polling places? Where were the other eight polling places? Does your letter mean that Sumter County will not notify voters without our suggestions on how notice should be given, and is Sumter County not required by State law to take all necessary steps to notify voters of the changes? With respect to "Exhibit 'A'," who are the black candidates, who opposed them, why does the heading say November, 1976 (your letter described "Exhibit A" as pertaining to the 1978 Democratic Primary)?

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5. In our letter of January 18, 1980 (copy enclosed), to Ms. Lynda F. Knight, Assistant Attorney General for the State of Alabama, we noted your comment that the Act was not yet approved and that, therefore, it was not ripe for review. We also asked that (when the Act was resubmitted) the submission include the information requested in our letter of October 23, 1979, because "the change cannot be reviewed until the Department has received the specific information requested." With respect to our request that you provide the number of registered voters by race, we stated: "If exact figures are not available, give your best estimate and the basis for them." However, subsequent correspondence, some of which was not received by this Department's Civil Rights Division until October, 1980, indicates that the Act is indeed ripe for review by the Attorney General. On the other hand, no response was made to the outstanding questions addressed to you in our letters of October 23, 1979, and January 18, 1980.

6. On October 9, 1980, during a telephone conversation with Elda Gordon, of our staff, you provided the following information:

A. The total number of registered voters in Sumter County, noting that the number exceeded the county's voting age population and estimating the percentage of blacks at around forty percent;

B. The number of registered voters in the eighteen previous beats and in the ten new beats;

C. The names of the old and of the remaining voting centers;

D. The names, beat numbers, race and daytime telephone numbers of the eight persons who last held the office of Constable in Sumter County;

E. A description of the duties of a Constable;

F. An interpretation of the provisions of Sections 6(3), 11(b), 14(a) and 15(a) of the Act dealing with the mechanical aspects of the conduct of elections in counties using voting machines.

This conversation did not cover items or information that could not satisfactorily be addressed telephonically but for which we had previously requested written responses or that would, more properly, be included in a complete submission of all the changes effected by the implementation of the Act involved.

7. Further, it has now come to our attention that members of the Sumter County Democratic Executive Committee may be affected by the proposed changes. (You had stated, during your telephone conversation on October 9, 1980, with Mr. Gordon, that you were not sure that these offices would be affected.) It seems that committee members are elected by voting box and that the number of voting boxes may be changed upon implementation of the provisions of this Act. This development, too, addresses the effect of the proposed change and must be reviewed before a decision can be reached on the merits of Act No. 79-729 (1979).

In summary, while it now appears that the Act is ripe for review, Sumter County has not completed its submission by providing all the information necessary for the proper evaluation of the changes it seeks to implement. While the Attorney General does not usually object to changes from paper ballots to voting machines, because of the incompleteness of the submission in this case, it is not clear what other changes are effectuated by the submitted Act. Consequently, the Attorney General is unable to conclude, as he must under Section 5, that Act No. 79-729 (1979) and the implementation of the Act by Sumter County will not have the proscribed discriminatory purpose or effect. Wherefore the Attorney General must interpose an objection consistent with the burden of proof placed on the submitting authority. However, we iterate our willingness to evaluate the changes on the merits pursuant to a request for reconsideration that responds to the questions found at No. 4, above (except item found at No. 4(D)), including the questions that arose from your November 26, 1979, response, and at No. 7, above. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the implementation of Act 79-729 (1979) legally unenforceable.

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If you have any questions concerning the matters discussed in this letter or if we can aid you in any way to obtain the information requested, please do not hesitate to call Ms. Elda Gordon (202--724-6675) who has been assigned to handle this submission. Please refer to File No. C6237 in any written response to this letter and address all correspondence to the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D. C. 20530. The envelope and first page should be marked "Submission Under Section 5, Voting Rights Act". Your cooperation will insure that your correspondence will be properly channeled.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Lynda F. Knight, Esq.



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

T.W. Thagard, Jr., Esq.
Smith, Bowman, Thagard,
Crook and Culpepper
Post Office Box 78
Montgomery, Alabama 36101

21 JUL 1981

Dear Mr. Thagard:

This is in reference to the change in the method of election for members of the Barbour County Commission from six single-member districts and one county-wide district to election from seven single-member districts and to the redistricting plan for those seven districts for Barbour County, Alabama, 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 May 27, 1981.

The Attorney General does not interpose any objection to the change to a plan that provides that all seven members of the County Commission be elected from single-member districts. 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 such change.

With regard to the redistricting plan, we have given careful consideration to the information you have provided as well as to that available from the Bureau of the Census and from other interested parties. Our analysis shows that most districts are not compact, do not follow natural and recognizable boundaries in many instances and, with respect to Districts 1 and 4, are noncontiguous. In addition, District 3 merges the 83.5 percent black Springhill/Comer area with a 72 percent white portion of the City of Eufaula resulting in a district which appears to have a majority white voting age population.

Our analysis also reveals that the county's submitted plan divides the predominantly black population concentrations in the northern and western portions of the county among three districts (Districts 3, 5, and 6) and the areas of

-2-

black population concentration within the City of Eufaula among three districts (Districts 1, 2 and 4). This fragmentation of black population concentrations results in a plan that contains no district in which a majority of the voters are black, even though the County is 44 percent black, according to the 1980 Census. Specifically, although the plan provides for districts with nominal black population majorities of 55.7, 55.8 and 57.6 percent (Districts 1, 3 and 6), the County has not provided any information regarding voting age population. Unless the ratio of black to white voting age population has radically changed since 1970, two of the above districts have a white majority voting age population and the third is only slightly over 50 percent black. Even in that district, whites constitute a majority of registered voters. In addition, apparent racial bloc voting and the majority vote requirement further impinge on black voting strength.

Since the prior plan is unconstitutionally malapportioned, Porte v. Barbour County Commission, Civil Action No. 79-537-N (M. D. Ala., Dec. 17, 1979), our standard of comparison under Beer v. United States, 374 F. Supp. 363, rev'd, 425 U.S. 130 (1976), is "options for properly apportioned single-member district plans." Wilkes County v. United States, 450 F. Supp. 1171, 1178, Conclusion 10 (D. D.C. 1978), aff'd, 439 U.S. 999 (1978). In this regard, our analysis reveals that readily apparent alternatives would provide at least two viable majority black districts, one in the northwestern portion of the county and one in the City of Eufaula, with black populations of well over 60 percent each. Such districts would be natural, compact and contiguous, would satisfy the Fourteenth Amendment requirement of one person, one vote and most likely such a plan could include a third district of nearly a 60 percent black population. The county has not provided any information to show that its choice of the submitted redistricting plan, in preference to the available alternatives, does not have the purpose or effect of discriminating against black voters.

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In addition, there is evidence pertinent to the question of an impermissible racial purpose. Barbour County has a long history of failing to comply with the preclearance provisions of the Voting Rights Act. This submission itself is the result of court action stemming from such a failure. While the white community was consulted regarding this plan, it is our understanding that leaders of the black community were not consulted concerning the placement of the new district lines, and the County has provided no evidence of any systematic effort to involve blacks in its deliberations. As noted above, racially polarized voting appears to exist in Barbour County, the proposed districts are not natural, compact or contiguous and the electoral scheme would maintain black voting strength at a minimum level, although readily available alternatives would provide a fair chance for meaningful minority participation. These facts all bear on the question of an impermissible racial purpose in the adoption of the plan. See Wilkes County v. United States, supra.

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 Section 51.39(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the redistricting plan for election of the Barbour County Commissioners.

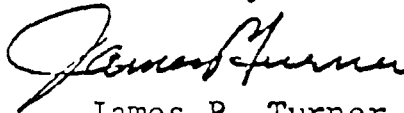
Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the redistricting plan legally unenforceable.

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To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action Barbour County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Section.

We are sending a copy of this letter to the Honorable Robert E. Varner, Judge, United States District Court, Middle District of Alabama.

Sincerely,

A handwritten signature in dark ink, appearing to read "James P. Turner", written in a cursive style.

James P. Turner
Acting Assistant Attorney General
Civil Rights Division



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 14 1981

J. B. Nix, Jr., Esq.
P. O. Box 167
Evergreen, Alabama 36401

Dear Mr. Nix:

This is in reference to Act No. 2284 (1971) which provides for a change in the method of electing members of the Conecuh County, Alabama, Board of Directors from four single-member districts to two multi-member districts, 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 completed on July 16, 1981.

We have given careful consideration to the information you have provided as well as to comments from interested parties. Our review shows that, at the time the change was enacted, minorities who were becoming active politically as a result of increased voter registration following the enactment of the Voting Rights Act of 1965 constituted a majority in one of the single-member districts. In addition, our analysis has revealed nothing to indicate that the change was made to alter in any way the administrative functions of the board members. Further, it does not appear that the change to multi-member districts was based on, nor does it appear to have addressed, any significant governmental interest except the need to comply with the one-person, one-vote principle, a need that could have been responded to in other ways, such as a realignment of the previously existing single-member districts.

The change has submerged into larger multi-member districts sizeable black concentrations so as to dilute the minority voting strength that those voters would have enjoyed under a continued single-member district plan. These circumstances, in the context of the racially polarized voting patterns that seem to exist in Conecuh County, raise at least an inference of a proscribed racially discriminatory purpose in the adoption and implementation of such a system and clearly results in a prohibited effect under the Act. See Wilkes County, Georgia v. United States, 450 F. Supp. 1171 (D. D.C. 1978), aff'd, 439 U.S. 999.

- 2 -

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 Section 51.39(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the implementation of the submitted Act.

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 this change has 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. In addition, the Procedures for the Administration of Section 5 (Section 51.55, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the implementation of Act No. 2284 (1971) legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action Conecuh County, Alabama, plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 25 1981

Honorable Floyd R. Cook
Chairman, Perry County Commission
Perry County Courthouse
Marion, Alabama 36756

Dear Judge Cook:

This is in reference to Act No. 81-226, which requires a purge and reidentification of voters in Perry County, Alabama, 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 completed on July 27, 1981.

We have considered carefully the information provided by you, relevant Census data, and information and comments from other interested parties. At the outset, we note that, in our consideration of changes such as this under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that the change has neither the purpose nor the effect of discriminating on the basis of race or color. See South Carolina v. Katzenbach, 383 U.S. 391 (1966); United States v. Georgia, 411 U.S. 526 (1973); 28 C.F.R. 51.19. Also, relevant to our analysis are the history of Perry County as it pertains to racial discrimination in the voting process and the present status of black voting activity in the county.

In this context, then, we have noted the history of resistance to black voting in Perry County and the resulting litigation in the 1960's, as well as the continuing racial polarization of voting patterns that seem to exist. Our analysis shows that the likely effect of this reidentification and purge will be to effectively dilute the voting strength of the black electorate in Perry County. Because of the continuing effects of the

- 2 -

past resistance to black voting participation, the lower economic status of the black population, the limited hours and locations at which reidentification can be accomplished, and the generally restrictive manner in which one would have to go about perfecting his or her reidentification, our analysis shows that the burden cast by this process upon blacks would be much greater than on whites and would make it much more difficult for blacks to preserve their voting status. This would appear to be so even though our analysis also shows that the county was not limited in the procedures it could have adopted to accomplish a legitimate reidentification nor has it been demonstrated why current state law providing for the purging of registered voter lists is not adequate for the maintenance of accurate registered voter rolls.

Finally, I note that the county may not be intending to comply with the provisions of 42 C.F.R. Part 801, Subpart D, which describes the method for removing the names of persons whose names are contained on the registration lists of Perry County as a result of their having been listed as voters by federal examiners, under the provisions set forth in 45 C.F.R. Part 801, Subpart C. There were a total of 2,790 black and 87 white persons listed by the examiners; thus, failure to comply with the provisions of Subpart D of 45 C.F.R. Part 801, in addition to being a violation of the Regulations, would have a disparate impact on black voters.


Under these circumstances, therefore, I am unable to conclude, as I must under the Voting Rights Act, that the conduct of this purge and reidentification as presently authorized does not have the purpose or effect of denying or abridging the right to vote on account of race or color. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the purge and reidentification of voters set forth in State Act No. 81-226.

- 3 -

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 this change has 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. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. In this regard, should the county take steps to extend the reidentification period until the end of 1982 and allow reidentification at the polls for the primary and general elections in 1982; use additional days and hours for reidentification including additional time to reidentify in the beats; use deputy registrars to assist in the reidentification at times and places convenient to the voters; and provide effective notice to the persons whose names are removed for failure to reidentify, we will reconsider our objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make Act No. 81-226 legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action Perry County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

2 OCT 1981

I. Drayton Pruitt, Jr., Esquire
Pruitt and Pruitt
Post Office Drawer PP
Livingston, Alabama 35470

Dear Mr. Pruitt:

This is in reference to the submission pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, of Alabama Act No. 81-224 and to the reidentification of registered voters that Sumter County, Alabama intends to conduct.

Based on your letters of July 24 and 28, 1981, which we received on August 3, 1981, your representations to Voting Section Attorney David H. Hunter in Livingston, Alabama on September 23 and 24, 1981, and your representations to Mr. Hunter by telephone on September 29, 1981, it is our understanding that the reidentification of registered voters of Sumter County will include the following features, in addition to those required by Act No. 81-224:

1. Under §§2 and 6 of Act No. 81-224 as presently drafted the board of registrars is to meet beginning on January 4, 1982 to purge from the list of registered voters the names of those persons who have not reidentified by January 1, 1982. It is now the intention of the county that the board will meet beginning on May 3, 1982 to purge the names of those voters who have not reidentified by May 2, 1982. This change in procedure will require an amendment of Act No. 81-224, and it is the expectation of Sumter County that such an amendment will be enacted by the Alabama legislature during its current special session or as soon thereafter as possible.

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2. Under Act No. 81-224 a voter whose name is purged from the registration list for failure to reidentify by the specified date may nevertheless, pursuant to §7, vote in any subsequent election if he reidentifies at least ten days prior to that election. It is now the intention of the county to permit a voter who has not previously reidentified to vote in the primary election to be held on Tuesday, September 7, 1982, if he reidentifies on or before that date. This change in procedure will require an amendment to Act No. 81-244, and it is the expectation of Sumter County that such an amendment will be enacted by the Alabama legislature during its current special session or as soon thereafter as possible.

3. Under §3 of Act No. 81-224 the board is required to visit each beat in the county once between the hours of 9 a.m. and 5 p.m. to enable registered voters of that beat to reidentify themselves. The board now plans to visit each of the county's eighteen beats three times between July 1, 1981 and December 31, 1981. During the first and third visits the board will be present between the hours of 9 a.m. and 5 p.m.; during the second the board will be present between the hours of 1 p.m. and 7 p.m. The board now plans further to visit each beat on two consecutive days during the period between January 1, 1982 and May 2, 1982; during these visits the board will be present between the hours of noon and 6 p.m.

4. Registered voters will also be able to reidentify at the county courthouse according to the following schedule:

a. On any day Monday through Friday (excepting holidays) between the hours of 9 a.m. and 5 p.m. At any time that the office of the board is closed voters will be able to reidentify at the office of the probate judge.

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b. From October 1981 through April 1982 on Thursdays between the hours of 5 p.m. and 7 p.m.

c. From October 1981 through May 1982 on one Saturday each month, including Saturday, May 1, between the hours of 9 a.m. and 1 p.m.

d. From May 1982 through August 1982 on Tuesdays between 5 p.m. and 7 p.m.

e. On Friday, September 3 and Saturday, September 4, 1982, between the hours of 8 a.m. and midnight.

f. On Tuesday, September 7, 1982, between the hours of 8 a.m. and 6 p.m.

5. To assist in the reidentification of voters on September 3, 4 and 7, 1982, the board will appoint such deputy registrars as are needed to enable all voters who apply to be processed without delay. Such deputy registrars will be appointed without regard to race. It is anticipated that approximately twelve deputy registrars will be appointed to serve in this capacity and that approximately half of these will be blacks and approximately half will be whites.

6. Registered voters who are so disabled that they are unable to travel by automobile may write or telephone the board and request that they be reidentified at their place of residence.

7. Registered voters who do not possess a social security card, driver's license, birth certificate, or voter registration card will be reidentified if their identity and residence can be established by other means.

8. Registered voters who are residents of the county but who are temporarily out of the county will be permitted to reidentify on the same terms and according to the same procedures by which they would be permitted to register to vote pursuant to Alabama

- 4 -

Code §17-4-134 (1979). It is understood, however, as specified in §7 of Act No. 81-224, that it is not necessary for members of the armed forces stationed outside of Sumter County or their spouses to reidentify. (It is further understood that a primary purpose of the reidentification is to remove from the registration list of the county the names of those persons who have ceased to be residents of the county.)

9. According to the most recent report of the Office of Personnel Management, 25 residents of Sumter County are eligible to vote pursuant to Sections 6 and 7 of the Voting Rights Act of 1965. The names of these persons will not be removed from the registration list except pursuant to the procedures of Section 7(d)(2) of the Act and 45 C.F.R. Part 801.

10. The names of persons purged from the list of registered voters for failure to reidentify will be published in newspapers of general circulation published in Sumter County.

11. The county's program of reidentification will be extensively publicized in the county's newspapers and radio stations.

Based on our understanding of the program of reidentification that Sumter County intends to carry out, the information the county has provided to us, and our own research, it is our tentative conclusion that the proposed reidentification has a legitimate governmental purpose and that the proposed reidentification as modified will not deny the right to vote of any resident of the county on account of race or color. Accordingly, if the reidentification is carried out as you have represented, it is our view that a version of Act No. 81-224 amended as described above would meet the requirements of Section 5. However, it will be our duty within sixty days of the submission of the amended Act No. 81-224 to determine, based on the information available to us at that time, whether that program satisfies the standards of Section 5.

- 5 -

On the other hand, with respect to the submission of Act No. 81-224 in its present form, consistent with the Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.8(a) and 51.35(a), 46 Fed. Reg. 870 (Jan. 5, 1981), and with United States v. Uvalde County, 455 F. Supp. 101 (W.D. Tex. 1978), affirmed, 439 U.S. 1059 (1979), the sixty-day statutory period requires us to render a decision at this time. In reaching such a decision, we are guided by relevant court decisions, which indicate that a submitted voting practice or procedure may not be precleared under Section 5 unless the Attorney General is persuaded that the practice or procedure does not have the purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group and will not have that effect. See Beer v. United States, 425 U.S. 130 (1976); State of Mississippi v. United States, 490 F. Supp. 569, 581 (D.D.C. 1979), affirmed 444 U.S. 1050 (1980); City of Port Arthur, Texas v. United States, C.A. No. 80-0648 (D.D.C. June 12, 1981) and Procedures, supra, 28 C.F.R. 51.39. Thus, even though, as suggested above, we feel that a modified procedure for reidentification would satisfy Section 5 requirements, in the present circumstances and under the controlling standard it is my duty, on behalf of the Attorney General, to interpose an objection to the voting changes occasioned by Alabama Act No. 81-224 as it presently exists.

Finally, based on the understandings and expectations explained above, we would consider it inappropriate to pursue relief further at this time in United States v. Board of Registrars of Sumter County, Alabama, C.A. No. CV81P1085W (N.D. Ala., filed July 14, 1981) seeking to enjoin the board's processing of applicants for reidentification. (You should understand, nevertheless, that private parties have standing to seek enforcement of the requirements of Section 5. See Allen v. State Board of Elections, 393 U.S. 544 (1969)). We assume, moreover, that if the contemplated amendment to Act No. 81-224 cannot be enacted by the Alabama legislature prior to the end of 1981 the county will consent to the entry of a preliminary injunction to postpone the purge pursuant to §§2 and 6 of Act No. 81-224 of the names of registered voters who have not reidentified by January 1, 1982. Because of the litigation with respect to the status of Act No. 81-224 under Section 5 I am taking the liberty of providing a copy of this letter to the court and to counsel for the prospective intervenors.

- 6 -

Of course under Section 5 and our Procedures, it is my duty to inform you that you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes neither have 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 or to request the Attorney General to reconsider this objection.

If you have any questions concerning this letter, please feel free to call Voting Section Attorney David H. Hunter, at 202/724-7189.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Honorable Sam C. Pointer
United States District Judge
United States District Court
Northern District of Alabama
Western Division
1800 Fifth Avenue North
Birmingham, Alabama 35203

Lynda F. Knight, Esquire
Assistant Attorney General
State of Alabama
250 State Administrative Building
64 North Union Street
Montgomery, Alabama 36130

Edward Ashworth, Esquire
William A. Eagles, Esquire
Morgan Associates, Chartered
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Abigail Turner, Esquire
Legal Services Corporation of Alabama
Post Office Box 2963
Mobile, Alabama 36601

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

26 OCT 1981

Honorable F. R. Albritton, Jr.
Probate Judge, Wilcox County
Post Office Box 660
Camden, Alabama 36726

Dear Judge Albritton:

This is in reference to Act No. 81-383, which requires a purge and reidentification of voters in Wilcox County, Alabama, 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 completed on August 26, 1981.

As a backdrop to our analysis, we note that a submitted voting practice or procedure may not be precleared under Section 5 unless the Attorney General is persuaded that the practice or procedure does not have the purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group and will not have that effect. See Beer v. United States, 425 U.S. 130 (1976); State of Mississippi v. United States, 490 F. Supp. 569, 581 (D.D.C. 1979), aff'd, 444 U.S. 1050 (1980). The burden of proof, "by a preponderance of the evidence," is on the submitting authority. City of Port Arthur, Texas v. United States, 517 F. Supp. 987, 1011 (D. D.C. 1981). It is in this context we have considered the information provided by you, relevant Census data, and the information and comments from other interested parties. We also have found pertinent to our analysis the history of Wilcox County as it pertains to racial discrimination in the voting process, the 1980 purge and resulting litigation, the present status of black voting activity in the county, as well as the likely effect this reidentification and purge will have on the voting strength of the black population as compared with its effect on the white population.

cc: Public File

- 2 -

At the outset, our analysis shows that the right to vote in Wilcox County and in the State of Alabama historically has been denied or abridged on account of race or color and that the State of Alabama and Wilcox County have adopted and seek to implement the submitted practices over the strong opposition of black residents, who constitute 69 percent of the county's population. Our analysis further shows that because of the continuing effects of past resistance to black voting participation, the lower socio-economic status of the black population, the limited hours and locations at which reidentification can be accomplished, and the generally restrictive manner in which one would have to go about perfecting his or her reidentification, the burden cast by this process upon blacks would be much greater than on whites and would make it much more difficult for registered blacks to preserve their voting status. This becomes particularly significant to the determination we must make, since our analysis also shows that the county was not limited in the procedures it could have adopted to accomplish a legitimate reidentification.

In addition, the county has not demonstrated why current state law providing for the purging of registered voter lists is not adequate for the maintenance of accurate registered voter rolls. We further call your attention to the provisions of 45 C.F.R. Part 801, Subpart D, which prescribes the method for removing the names of persons whose names are contained on the registration lists of Wilcox County as a result of their having been listed as voters by federal examiners, under the provisions set forth in 45 C.F.R. Part 801, Subpart C. According to our information, a total of 3,667 black and 11 white persons have been listed by federal examiners. Failure to comply with the provisions of Subpart D of 45 C.F.R. Part 801, in addition to being a violation of the regulations, would have a disparate impact on black voters.

Under these circumstances, therefore, I am unable to conclude, as I must under the Voting Rights Act, that the conduct of this purge and reidentification as presently authorized does not have the purpose or effect of denying or abridging the right to vote on account of race or color. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the purge and reidentification of voters set forth in Act No. 81-383.

- 3 -

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek declaratory judgment from the United States District Court for the District of Columbia that this change has 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. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. In this regard, should the county take steps to extend the reidentification period until the end of 1982 and allow reidentification at the polls for the primary and general elections in 1982; use additional days and hours for reidentification including additional time to reidentify in the beats; use deputy registrars, including minorities, to assist in the reidentification in a meaningful way at times and places convenient to the voters; provide effective notice to the persons whose names are removed for failure to reidentify, we will reconsider our objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make Act No. 31-383 legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action Wilcox County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Rights Section.

Sincerely,

Mr. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. DEPARTMENT OF JUSTICE

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 26 1981

Honorable Floyd R. Cook
Judge of Probate
Perry County Courthouse
Marion, Alabama 36756

Dear Judge Cook:

This is in reference to Alabama Act No. 81-635 (H.B. No. 1055), which provides for the use of voting machines in Perry County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Supplemental information was received with respect to this submission on August 25, 1981.

In our letter of October 13, 1981, we informed you of our reasons for not being able to conclude at that time that the change from the use of paper ballots to the use of voting machines would not have the effect of denying the right to vote on account of race or color. We explained--

First, we have not been told how many machines the county intends to purchase or how these machines will be allocated among the county's beats and boxes. Second, we have not been advised of the kind of program the county intends to conduct to familiarize its registered voters with the use of machines. Third, we have been given no information on the procedure the county intends to follow in providing assistance at the polls to illiterate voters.

- 2 -

On October 16, 1981 you met with David H. Hunter, an attorney in our Voting Section, to discuss these questions. You explained, with respect to the first question, that at each of the county's polling places one voting machine would be provided for every 400 registered voters, and that two extra machines would be required. Thus 9 machines will be provided for beat 1, boxes 1-10; 2 for beat 1, boxes 11-12; 7 for beat 3; 2 for beat 7, and 1 apiece for the remaining 8 beats, for a total of 30 machines (including 2 extras). It is our view that this allocation of machines will enable Perry County voters to vote without delay on a racially neutral basis.

With respect to the second question, you agreed to place one voting machine on display at the courthouse in Marion and one voting machine on display at the city hall in Uniontown as soon as the machines are acquired, to have a machine on display for one day at each of the county's four high schools, and to make machines available for meetings of organizations and civic groups in Perry County. It is our view that this program, publicized and supplemented by local radio announcements, local newspaper announcements, and explanatory flyers and combined with instruction at the polls pursuant to §17-9-25(a) of the Alabama Code (1979), will enable Perry County to introduce the use of voting machines without denying the right to vote to any resident of Perry County on account of race or color.

With respect to the third question, you agreed that assistance at the polls to illiterate voters would be provided as specified in §17-9-25(a) of the Alabama Code (1979), under which a voter can receive assistance from two inspectors of his choice or any other person of his choice. It is our view that such provision of assistance will enable illiterate voters in Perry County to participate in the county's elections on a basis that does not deny their right to vote on account of race or color.

It is our view, therefore, based on the above understandings, that we will be in a position to preclear Act No. 81-635 once the County Commission has adopted appropriate resolutions incorporating these understandings. Once such resolutions are received, it will be our duty to determine, based on the information available to us at that time, whether the county's program for the introduction of the use of voting machines satisfies the standards of Section 5.

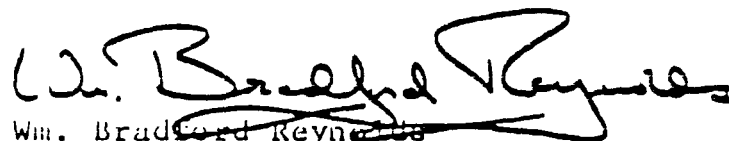
- 3 -

On the other hand, with respect to Act No. 81-635 as presently submitted, consistent with the Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.8(a) and 51.35(a), 46 Fed. Reg. 870 (Jan. 5, 1981), and with United States v. Uvalde County, 455 F. Supp. 101 (W.D. Tex. 1978), affirmed 439 U.S. 1059 (1979), the sixty-day statutory period requires us to render a decision at this time. In reaching such a decision, we are guided by relevant court decisions, which indicate that a submitted voting practice or procedure may not be precleared under Section 5 unless the Attorney General is persuaded that the practice or procedure does not have the purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group and will not have that effect. See Beer v. United States, 425 U.S. 130 (1976); State of Mississippi v. United States, 490 F. Supp. 569, 581 (D.D.C. 1979), affirmed 444 U.S. 1050 (1980); City of Port Arthur, Texas v. United States, 517 F. Supp. 987 (D. D.C. 1981), and Procedures, supra, 28 C.F.R. 51.39. Thus, even though, as suggested above, we feel that the program for the introduction of voting machines that you now propose would satisfy Section 5 requirements, in the present circumstances and under the controlling standard it is my duty, on behalf of the Attorney General, to interpose an objection to the voting changes occasioned by Alabama Act No. 81-635 absent such supplementing resolutions.

Once resolutions embodying the program described above have been adopted by the County Commission you should feel free to submit them to us for Section 5 review and simultaneously request reconsideration, pursuant to 28 C.F.R. 51.44, of the objection to Act No. 81-635. We will give your submission and reconsideration request expedited consideration pursuant to 28 C.F.R. 51.32.

If you have any questions concerning this letter,
please feel free to call Mr. David H. Hunter, at 202/
724-7189.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds". The signature is fluid and cursive, with a large, sweeping "W" and a long, trailing "s" at the end.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

16 NOV 1981

T. W. Thagard, Jr., Esq.
Smith, Bowman, Thagard,
Crook & Culpepper
Post Office Box 78
Montgomery, Alabama 36101

Dear Mr. Thagard:

This is in reference to the redistricting plan for the seven single-member districts for members of the Barbour County Commission of Barbour County, Alabama, 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 September 16, 1981.

At the outset we note that on July 21, 1981, an objection was interposed on behalf of the Attorney General to the plan previously submitted. We found that the districts in that plan were "not compact, do not follow natural and recognizable boundaries . . . and . . . are noncontiguous." We further found that the plan evidenced dilution of black voting strength in Barbour County by drawing new district lines in such a way as to cause needless fragmentation of black population concentrations. In the context of Barbour County, including as it does racial bloc voting, a majority vote requirement, and a substantially lower voting age population and voter registration rate among blacks than among whites, we were unable to conclude that black voting strength had been maintained at a level that would have allowed blacks to participate fully and fairly in the electoral process. Accordingly, we advised the county that it had failed to sustain its burden under the Voting Rights Act and an objection was interposed.

As noted in our July 21 letter of objection, since the pre-existing plan was found to be unconstitutionally malapportioned, Forte v. Barbour County Commission, Civil Action No. 79-537-N (M.D. Ala., Dec. 17, 1979), the proper standard of comparison under Beer v. United States, 425 U. S. 130 (1976), is to compare the submitted plan with "options for properly apportioned single-member

- 2 -

district plans." Wilkes County v. United States, 450 F. Supp. 1171, 1178, Conclusion 19 (D. D.C. 1978), aff'd, 439 U.S. 999 (1978). Such a comparison necessarily must take into account the existence of racially polarized voting in Barbour County. Also important to our analysis is the wide discrepancy in voting age population between blacks and whites in Barbour County. Weighing in the balance these and other considerations we must in the end determine whether your submitted plan was designed "to minimize . . . the voting strength of racial . . . elements of the voting population." Fortson v. Dorsey, 379 U.S. 433, 439.

With this background in mind we have given careful consideration to the information you have supplied as well as that available from our files, the Bureau of the Census and other interested parties. Our analysis shows that even though the districts in the new proposal appear to be contiguous, some continue to be drawn in a manner designed to fragment black population concentrations. This is particularly the case in the City of Eufaula where the boundaries of District 3 are drawn in a convoluted and distorted fashion that "carves out" of the district three virtually all-black areas while drawing into the district elsewhere two all-white areas. The information that you have supplied does not indicate any governmental interest served by this configuration and we have received no explanation to suggest a reason other than to minimize black voting strength in District 3 over what one would naturally expect had a more evenly drawn, unfragmented plan been adopted.

In addition, with respect to the boundary line between Districts 1 and 2, predominantly black voting Precinct 10, which has the second highest percentage of black registered voters in the county, seems to be split unnecessarily between Districts 1 and 2. This fragmentation also results in what seems to be an unnecessary splitting of a Census Enumeration District and the attending unreliability of statistics that such splitting engenders. In fact, our analysis shows that the unreliability of the data resulting from the split in this instance may be exacerbated by the methodology used, which assumed equal distribution of population by race throughout the ED and which made no distinction in the number of persons per household whether white or black. Census experience has shown that these are not realistic assumptions.

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 Section 51.39(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county has carried

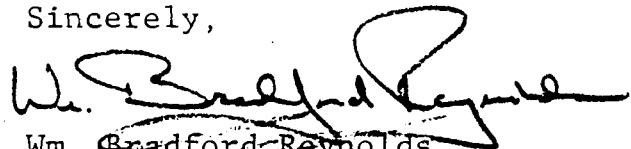
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its burden of showing that the plan here under submission is free of any purpose to abridge the right to vote on account of race or color. Accordingly, on behalf of the Attorney General, I must interpose an objection to the redistricting plan contained in the instant submission.

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 this change has 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. In addition, the Procedures for the Administration of Section 5 (Section 51.44, Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting plan for Barbour County legally unenforceable.

Since this matter is related to the litigation pending in the federal district court, I am taking the liberty of forwarding a copy of this letter to Judge Varner. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Chief Judge Robert E. Varner



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

January 5, 1982

Dennis Nabors, Esquire
City Attorney
P.O. Box 1111
Montgomery, Alabama 36192

Dear Mr. Nabors:

This is in reference to the redistricting plan adopted on July 28, 1981, for the City of Montgomery in Montgomery County, Alabama, 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 completed on November 6, 1981. Although we noted your request for expedited consideration, we have been unable to respond until this time.

As you will recall from our letter of October 20, 1981, and our meeting of December 22, 1981, we have been exploring certain issues that have been raised with respect to the purpose and effect of this redistricting plan. In so doing, we have continued to receive information relating to the issues. The latest information was received so recently that we have not been able to complete our assessment of this matter at this time. Accordingly, and consistent with the Attorney General's Procedures for the Administration of Section 5 of the Voting Rights Act (46 Fed. Reg. 878, Sub-section 5139), I must interpose an objection to the implementation of the plan as submitted. We are, however, continuing our consideration of the plan in light of the information recently received and my telephone conversation with you today. It is my hope and expectation that a prompt resolution of this matter can be achieved.

Sincerely,

A handwritten signature in dark ink, reading "Wm. Bradford Reynolds", is written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 23 1982

Mr. J. H. Robison
Chairman, Conecuh County Democratic
Executive Committee
P. O. Box 106
Evergreen, Alabama 36401

Dear Mr. Robison:

This is in reference to the changes in filing fees and the change in method of election and size of the Conecuh County Democratic Executive Committee in Conecuh County, Alabama, 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 February 23, 1982.

The Attorney General does not interpose any objections with respect to the changes in filing fees. 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 such changes.

With respect to the change in method of election and reduction in size of the executive committee, we have given careful consideration to the materials provided by you and other interested parties in Conecuh County as well as information derived from our observation of elections in the county. We note that prior to 1971, members of the County Democratic Executive Committee were elected from 16 two-member districts, a number of which are predominantly black. Under the submitted change, executive committee members are elected from two 15-member districts, both of which contain large white majorities. The change was first enacted shortly after the first black candidacies in the county and since enactment of the change, no more than one member of the thirty-member committee has been a black person. The absence of black representation, moreover, appears to be a significant contributing factor in the racial disparities found to exist in the Conecuh County election process which we have previously brought to your attention.

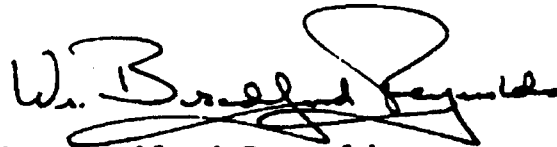
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Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.39(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). Under the circumstances involved here, however, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Accordingly, on behalf of the Attorney General I must interpose an objection to the change in method of electing the Conecuh County Democratic Executive Committee.

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 this change has 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. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the change in size and election method legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Conecuh County Alabama Democratic Executive Committee plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm. Bradford Reynolds", with a large, stylized flourish at the end.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

6 MAY 1982

Honorable Charles A. Graddick
Attorney General
State of Alabama
Montgomery, Alabama 36130

Dear Mr. Attorney General:

This is in reference to the reapportionment of the Alabama Legislature by Act 81-1049 of the Second Special Session of the 1981 Alabama Legislature, 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 completed on April 2, 1982.

We have given careful consideration to the materials you have submitted, as well as comments and information provided by a number of other interested parties, and relevant decisions of the federal courts. Under Section 5, the submitting authority must show that a change does not have a discriminatory purpose and would not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976); see also, City of Richmond v. United States, 422 U.S. 358 (1975).

Applying these principles to Act 81-1049, we note first that the proposed redistricting plan clearly would lead to a retrogression in the position of black voters. For instance, the plan reduces the number of Jefferson County house districts with black majorities from seven to six and also reduces black influence in one of the six remaining districts through the unnecessary reconfiguration of existing district 49; the number of house districts in the western "black belt" with black voting age majorities would decrease from five to one (and in the remaining one the majority declines); the black

- 2 -

majority in house district 46 (Tuscaloosa) would be reduced significantly; the black proportion in house district 65 would decline substantially; and the plan would reduce the black proportion in all of the ten urban house districts with current black populations of over 25 percent, thus systematically reducing the influence which black voters in these districts now enjoy. Because of the peculiar affinity between house and senate districts in the plan, these reductions within house districts concomitantly reduce black majorities or influence in their respective senate districts. Since these reductions do not appear to have been necessary to any legitimate governmental interest, we are unable to conclude that they are free of the racial purpose and effect proscribed by Section 5.

In addition, it appears that senate districts in Mobile were reconfigured so as to "pack" black population into district 33 with a resulting reduction of black influence in district 35. At the same time, and in a seemingly inconsistent approach, the plan neglects to combine black areas within Montgomery so as to allow a black majority senate district there. Accordingly, without any offsetting increase in black influence or opportunities elsewhere, as in Montgomery, for example, we are unable to conclude that the reconfiguration of Mobile senate districts would not have a retrogressive effect.

We note further that the proposed reapportionment divides what appears to be an unnecessarily large number of counties along census enumeration district lines with the effect of fragmenting a large number of existing voting precincts or beats. The existing plan, ordered in 1972 by Sims v. Amos, 336 F. Supp. 924 (M.D. Ala. 1972), necessitated similar divisions and the concomitant reassignment of large numbers of voters. Based on the significant difficulties involved in the two year effort to implement the Sims plan, the absence of any effective corrective measures adopted since that time, and factors noted in the course of our observation of elections in Alabama, we are unable to conclude that Act 81-1049 can be implemented without serious danger of discriminating against black voters in counties and districts with substantial black populations. A final barrier to implementation is the failure of the Act to assign Montgomery census tract 6 with 3,764 persons, 91% of whom are black, to any district.

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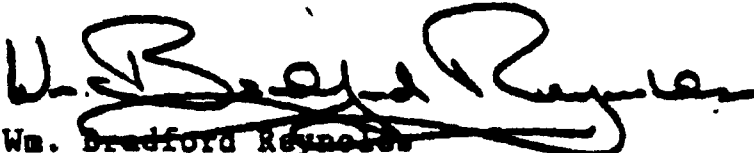
Under all of these circumstances, therefore, we are unable to conclude that the proposed plan meets the Section 5 burden. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the reapportionment of the Alabama Legislature by Act 81-1049, Second Special Session of 1981.

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 this change has 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. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the reapportionment of the Alabama Legislature by Act 81-1049 legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Alabama plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Section.

We are aware that there is now pending litigation concerning the state legislative redistricting. Burton v. Hobbie, C.A. No. 81-617-N (M.D. Ala.) I am taking the liberty of providing a copy of this letter to the Court in light of our desire to be of any assistance we can.

Sincerely,


Wm. Bradford Reynolds
Assistant Attorney General .
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

19 JUL 1982

Honorable Calvin Steindorff
 Probate Judge and Chairman,
 Butler County Commission
 P.O. Box 756
 Greenville, Alabama 36037

Dear Judge Steindorff:

This is in reference to Act No. 136 (1969), which changes the method of electing commissioners from district to at-large elections in Butler County, Alabama, 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 completed on May 20, 1982.

We have given careful consideration to the information you have submitted, comments from interested parties, and relevant decisions of the federal courts. See, e.g., Wilkes County, Georgia v. United States, 450 F. Supp. 1171 (D. D.C. 1978), aff'd, 439 U.S. 999. We note that the black population of Butler County is concentrated in the northwestern portion of the county and in an adjacent area of the City of Greenville. Accordingly, under the single-member district method of election, which existed prior to the submitted change to at-large with residency districts, properly apportioned districts would result in one district with a substantial black majority of population and voter registration. Our analysis has also revealed evidence of racially polarized voting, non-responsiveness on the part of commission members to the particularized needs of the black community, and other factors which, in the context of a history of racial discrimination in the county, indicate that the at-large election system enacted by Act No. 136 (1969) denies black voters equal access to the county government. Rogers v. Lodge, _____ U.S. _____ (July 1, 1982).

Under Section 5 of the Voting Rights Act the submitting authority has 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); 28 C.F.R. 51.39(e). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the change to at-large elections for the Butler County Commission provided by Act No. 136 (1969).

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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 this change has 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. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the change to at-large elections legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Butler County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm. Bradford Reynolds", is written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Lynda F. Knight, Esq.
Assistant Attorney General
250 Administrative Building
64 North Union Street
Montgomery, Alabama 36130

19 JUL 1982

Dear Ms. Knight:

This is in reference to Acts Nos. 572 (H. 278) and 611 (H. 10) of the 1982 Regular Session of the Alabama Legislature, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submissions were received on May 21 and May 18, 1982, respectively.

We have given careful consideration to the information you have provided as well as that provided by interested parties. We note that, currently, in order for a minor party to be included on a general election ballot, the party must hold its appropriate assembly within 90 days of the first primary election date and file nomination papers for its candidates with the appropriate officials by 5:00 P.M. on the day of the first primary election. Act No. 611 (1982) changes this method so that beginning with the 1982 elections, a party that does not hold primaries, regardless of the number of votes it received at the last general election, must file its nominating papers with the appropriate officials 60 days prior to the first primary election. Section 2 of this Act further requires that these parties hold their appropriate assemblies also at least 60 days prior to the first primary election. Act No. 572 (1982) requires a party seeking inclusion on the general election ballot, whether or not it holds primaries and when it did not garner more than 20 percent of the total votes cast in the last general election in a jurisdiction, to file its nominating papers and list of the signatures of at least one percent of the qualified electors who cast ballots for the office of Governor in each such juris-

- 2 -

diction. These papers must be filed with the secretary of state or appropriate local officials at the time that parties which hold primaries must certify the names of their primary candidates, i.e., 50 days prior to the first primary.

We have been informed that Act No. 572 (1982) was publicized beginning late May and mid-June of 1982 and that little, if any, publicity was provided for Act No. 611 (1982). It is our understanding that the predominantly black National Democratic Party of Alabama is still one of the largest active minor parties in the State and that it, along with other minor parties available to minority voters, is subject to the provisions of both of the submitted Acts.

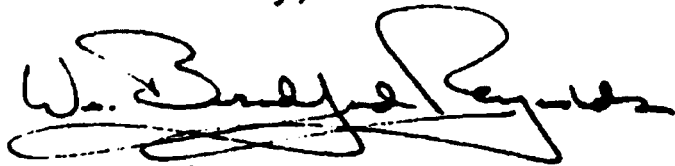
Under Section 5 of the Voting Rights Act the submitting authority has the burden of showing that a submitted change has no discriminatory purpose and effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Our analysis indicates that the State of Alabama has not met its burden of showing that provisions of the submitted Acts will not have the effect proscribed by the Voting Rights Act. Our conclusion is based, in part, on the inadequacy and untimeliness of the publicity which has made it virtually impossible for the non-major parties, including the NDPA, to field their candidates for the 1982 elections. In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted changes.

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 neither have 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. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. Such a request for reconsideration may be appropriate at a time when those affected by the Acts have been appropriately apprised of their provisions and will have an opportunity to comply with their requirements in sufficient time prior to the subsequent election. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the implementation of Acts No. 572 (1982) and No. 611 (1982) legally unenforceable.

- 3 -

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Alabama plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds", with a large, stylized flourish at the end.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Honorable Don Siegelman
Secretary of State



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JUL 26 1982

Robert G. Kendall, Esq.
Johnston, Johnston & Kendall
P.O. Box 550
Mobile, Alabama 36601

Dear Mr. Kendall:

This is in reference to the proposed redistricting plan for electing members of the Board of Directors in Conecuh County, Alabama, 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 July 21, 1982. Pursuant to the request of the Court in Fluker v. Conecuh County, Alabama (S.D. Ala.), we have reviewed your submission on an expedited basis.

We have given careful consideration to the materials you have provided in this and previous submissions, as well as to comments and information of other interested parties, and information obtained during the course of our observation of elections in Conecuh County. We note that a high level of racial bloc voting obtains in county elections, and that even though much of the black population in Conecuh County is concentrated in the southeastern portion of the City of Evergreen (Beat 11-3) and the adjacent southeastern portion of the County (Beats 7 and 16), none of the proposed districts has a black majority.

The previously existing single-member district election plan is now severely malapportioned and has not been utilized in over ten years. In these circumstances we believe that, in order to satisfy the Section 5 effect standard, the County must demonstrate that the proposed plan "fairly reflects the strength of black voting power as it exists." State of Mississippi v. United States, 490 F. Supp. 569, 581 (D. D.C. 1981).

- 2 -

Based on 1980 Census data, 36.63 percent of the County's voting age population is black. By far the largest concentration of minority population is located in the southeastern quadrant of the county, particularly the southeastern part of the City of Evergreen. A fairly drawn plan should, in our view, include at least one district in that area that has a black majority voting age population. Our analysis suggests that several alternatives are available to the County that would accomplish such a result consistent with the constitutional "one person, one vote" requirement. The County has offered no satisfactory explanation for adopting, instead, a plan that needlessly fragments black communities in the southeast, leaving the minority population with no district in which its actual voting strength can be realized.

We note that the plaintiffs in the Fluker litigation have prepared a single-member district plan under which black voters would constitute a majority in one district and a sizable minority in another. We have not fully analyzed that proposal under Section 5, since it falls outside the jurisdictional bounds of our statutory review responsibility. As a preliminary matter, we can say, however, that it appears to address our principal concerns with the County's proposal. Nonetheless, it is but one of several options available for further consideration.

Without specific reference to any of the plans under discussion, we would generally caution against any configuration of districts designed to maximize black voting strength. A racially discriminatory effect can be found as readily under Section 5 for unnecessarily "packing" large numbers of minorities into one district as it can for needlessly "cracking" (or fragmenting) minority communities so that the black vote is dispersed among two or more districts. A fairly drawn plan follows natural or logical boundary lines and suffers from neither "packing" nor "cracking" minority communities.

- 3 -

For the reasons stated, I must on behalf of the Attorney General, interpose an objection to the proposed redistricting plan, since it has not been shown, as the County must under Section 5, that the submitted plan has neither a racially discriminatory purpose nor effect.

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 this change has 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. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed redistricting plan legally unenforceable. See also 28 C.F.R. 51.9.

We recognize the time constraints under which the County has operated in devising this plan and we also recognize that the task of devising an acceptable plan is a responsibility of elected officials which should be pre-empted by the court only as a last resort. Reynolds v. Sims, 377 U.S. 533, 587 (1964); Chapman v. Meier, 420 U.S. 1, 27 (1975). Thus, if the County officials desire to revise the plan to fairly reflect black voting strength as it exists, this Department stands ready to conduct the necessary Section 5 review on an expedited basis.

A copy of this letter is being provided to the Court in Fluker v. Conecuh County, Alabama (S.D. Ala.).

Sincerely,


 Wm. Randolph Reynolds

Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 2, 1982

Honorable Charles A. Graddick
Attorney General
250 Administrative Building
64 North Union Street
Montgomery, Alabama 36130

Dear Mr. Attorney General:

This is in reference to the reapportionment of the Alabama Legislature by Act No. 82-629 (H.B. No. 19), 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 June 2, 1982.

After a thorough analysis of all the information available to us, we are unable to conclude that the proposed plan as it affects the areas outlined in our June 8, 1982, letter is free of the proscribed purpose or effect. In reaching this conclusion, we have carefully examined the possibility of developing a nonretrogressive reconfiguration of districts in the "Black Belt" area in question (Districts 83, 85, 86, 87, 88 and 90) that is more faithful to the State's articulated criteria of adherence to county boundaries and minimal fragmentation of minority communities. Our analysis demonstrates that several such alternatives are available without causing an undue "ripple effect" on the adjacent districts. The State has failed to explain satisfactorily why it adopted, instead, a configuration for the "Black Belt" area that departs measurably from the stated criteria and offers less prospect for the black voters in those districts to participate fully in the electoral process. Accordingly, I must, on behalf of the Attorney General, interpose an objection to Act No. 82-629.

In reaching this conclusion, I am mindful of your letter of July 28, 1982, requesting that the 60-day period for review of the State's submission be extended. Under the statute, the review period can only be altered on a request by the Attorney General for additional information necessary to our analysis of the submission or when we have received from the submitting authority documents and

-2-

information materially supplementing a submission. Such a request would be inappropriate in this situation where a full exchange of all pertinent information has already occurred.

Since the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection, you may, of course, submit any comments on our analysis in the course of seeking reconsideration. In addition, 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 the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed reapportionment legally unenforceable.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm. Bradford Reynolds", is written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

2025 Feb-24 PM 04:41
U.S. DISTRICT COURT
N.D. OF ALABAMA

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 19, 1982

Lynda F. Knight, Esq.
Assistant Attorney General
250 Administrative Building
64 North Union Street
Montgomery, Alabama 36130

Dear Ms. Knight:

This is in reference to five acts of the Legislature of the State of Alabama relating to the conduct of voter registration in Mobile County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. These five acts are: Act No. 122 (1972), Act No. 884 (1978), Act No. 81-740, Act No. 82-374, and Act No. 82-377. The submission of Act No. 122 (1972) and Act No. 884 (1978) was received on July 26, 1982. As our letter of September 24, 1982, indicated, information enabling us to review these acts was received on August 20, 1982. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.37). A partial response to our requests for additional information with respect to Act No. 81-740, Act No. 82-374, and Act No. 82-377 was received on August 20, 1982.

The Attorney General does not interpose any objections to the voting changes contained in Act No. 122 (1972), Act No. 884 (1978), and Act No. 82-374. 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 these changes. See also 28 C.F.R. 51.48.

With regard to the changes involved in Act No. 81-740 and Act No. 82-377, we note at the outset that under Beer v. United States, 425 U.S. 130, 141 (1976), preclearance must be denied

- 2 -

to a voting procedure change "that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Our analysis shows that the changes in voter registration procedures contained in these two acts cumulatively may have such a retrogressive effect in the context of current voter registration practices in Mobile County.

Section 1 of Act No. 81-740 prohibits the Board of Registrars of Mobile County from registering any voters during the fifteen-day period prior to an election. Under prior law such registration was permitted up until ten days prior to an election. Because the board does not register voters on Sunday and usually does not register voters on Saturday, the practical effect of this provision will be to implement a deadline for registration prior to an election that is one week earlier than it has been in the past.

We have received no information to justify the need for the five extra working days to prepare for an election beyond what has been required in the past and beyond what most Alabama counties use. On the other hand, it appears that the registration rate for blacks in Mobile County is lower than that for whites, that registration opportunities in Mobile County are relatively limited, and that interest in voter registration among blacks is greatest shortly before an election. Thus, the expansion of the cut-off period for registration would likely impact most heavily upon black potential voters.

The final sentence of Section 2(a) of Act No. 82-377 states that a person who requests the board of registrars to conduct voter registration outside the courthouse "shall be responsible for furnishing an appropriate facility and notice and publicity announcing the visit." This would appear to place a burden on persons requesting voter registration at locations other than the county courthouse that did not previously exist and which does not exist in other Alabama counties. Given the large land area of Mobile County, the county's large voting age population, the failure of the county to provide deputy registrars, and the requirement of decennial reidentification, it would appear that a registration program that does not offer a continuing reasonable opportunity for county residents to register on a decentralized basis imposes a serious burden on persons not registered. Because the registration percentage of blacks in Mobile County appears to be substantially lower than that of whites, the burden of a change that will have the effect of reducing voter registration opportunities on

- 3 -

a decentralized basis likely would fall more heavily on blacks than on whites.

Section 2(c) of Act No. 82-377 states: "In the last month immediately preceding an election, all registration shall be at Mobile County courthouse." This provision likewise places a limitation on decentralized registration that did not previously exist and which does not exist in other Alabama counties. While such a restriction may be reasonable in the context of a registration system that permits ample opportunities for voter registration at other times, i.e., retention of the ten-day deadline and provision for decentralized registration at the initiative and expense of the registration board, in the context of the limited registration opportunities now provided by Mobile County this requirement would appear to add cumulatively to an unreasonable limitation on the registration process in Mobile County.

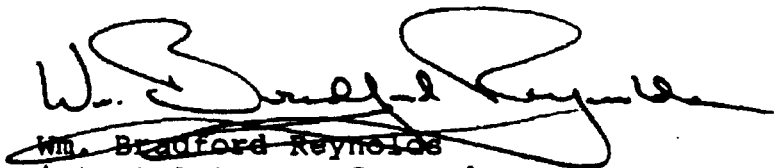
In these circumstances, I cannot conclude under the Voting Rights Act, that the changes involved in Act No. 81-740, and Act No. 82-377 will not have a retrogressive effect on the ability of blacks to register to vote. Therefore I must, on behalf of the Attorney General, interpose an objection to these changes.

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. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permits you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the implementation of Act No. 81-740 and Act No. 82-377 legally unenforceable. 28 C.F.R. 51.9.

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To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Alabama plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. 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: Ms. Euber R. Collins
Chairperson, Mobile County
Board of Registrars

Mr. Bay Haas
Chairman, Mobile County Commission



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 10, 1983

E. Paul Jones, Esq.
P.O. Box 448
Alexander City, Alabama 35010

Dear Mr. Jones:

This is in reference to the change in the method of electing county commissioners from single-member districts to at-large in Tallapoosa County, Alabama, 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 the information to complete your submission on March 11, 1983. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have given careful consideration to the information you have provided, along with Bureau of the Census data and information and comments from other interested parties. At the outset, we note that this change initially resulted from litigation in 1969 to redress a one-person, one-vote issue and that the at-large system has been implemented by the county from that time until ordered by the court in Holley v. Sharpe, Civ. Action No. 82-17-E (M.D. Ala.), on September 9, 1982, to seek this preclearance. Thus, we have before us a history of elections under the at-large system which reflects that although blacks constitute 27 percent of the population of the county their influence on the outcome of county-wide elections is significantly less than it would be under a system in which officials are elected from single-member districts, as formerly existed.

In addition, our analysis of election returns for county commissioner and school board elections, as well as other information showing a racial consciousness in Tallapoosa County elections, indicates a pattern of racially polarized voting. Where such a phenomenon exists under an at-large system, coupled with a majority vote requirement as it is in Alabama elections, minorities have little chance of electing a candidate of their choice or significantly influencing the outcome of elections.

cc: Public File

- 2 -

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Changes in voting procedures, such as the instant one, have the prohibited effect if they result in a retrogression of black voting strength. See Beer v. United States, 425 U.S. 130 (1976). Because the court in Reynolds v. Gallion, 308 F. Supp. 803 (M.D. Ala. 1969), declared the pre-1970 districts to be unconstitutional under the Fourteenth Amendment, the benchmark for measuring retrogression in this situation would be a "properly apportioned single-member district [plan]." Wilkes County, Georgia v. United States, 450 F. Supp. 1171, 1178 (D. D.C. 1978). When so viewed, the at-large method of election does not "fairly [reflect] the strength of black voting power as it exists." Mississippi v. United States, 490 F. Supp. 569, 581 (D. D.C. 1979). Our analysis reveals that a fairly drawn single-member district plan would result in at least one district in which blacks would have substantially more influence in electing a candidate of their choice than under the at-large system.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden of showing the absence of the proscribed purpose and effect. Therefore, on behalf of the Attorney General, I must object to the at-large method of electing county commissioners in Tallapoosa County.

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 this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the at-large method of election legally unenforceable. 28 C.F.R. 51.9.

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To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Tallapoosa County plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Bradford Reynolds", written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 17 1984

David F. Steele, Esq.
Hare and Hare
P. O. Box 833
Monroeville, Alabama 36461

Dear Mr. Steele:

This is in reference to the 1970 change in the method of electing members of the county commission from four single-member districts to at-large election from double-member residency wards in Monroe County, Alabama, 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 the information to complete your submission on December 19, 1983.

We have considered carefully the information you have provided along with that provided by other interested parties and relevant Census data. At the outset, we note that under both the 1970 and 1980 Censuses, blacks constituted more than 42 percent of the population of Monroe County; yet no black has ever been successful in winning a seat on the council. On the other hand, our analysis indicates that blacks are concentrated in the northern part of the county and appear to have constituted a significant majority in two of the four previously existing single-member districts. While we are aware that that plan was declared to be malapportioned and thus unconstitutional under the Fourteenth Amendment in Bowden v. Stacey, 309 F. Supp. 510 (S.D. Ala. 1970), our analysis also shows that, under a fairly drawn single-member district plan using 1980 Census data, blacks likely would still constitute significant majorities in two of the four districts.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Under Beer v. United States, 425 U.S. 130 (1976), the absence of such an effect is shown only when it is demonstrated that there has been no retrogression in the political strength that the minority group has already attained. In the context of racially

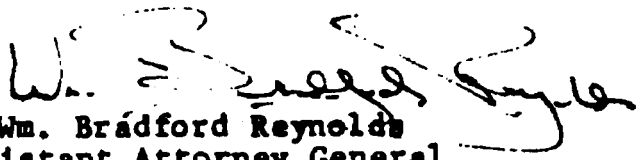
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polarized voting which appears to exist in the county, and the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change from single-member districts to the at-large election of members of the Monroe County Commission.

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 this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the change to at-large elections in Monroe County legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Monroe County plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,


Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 26, 1984

J. Thomas King, Esq.
Adamsville City Attorney
9131 Parkway East
Birmingham, Alabama 35206

Dear Mr. King:

This refers to the fifty-eight annexations to, and the deannexation from, the City of Adamsville in Jefferson County, Alabama, 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 the information to complete your submission on January 26, 1984.

To determine that a change in the composition of the city's population resulting from these annexations and the deannexation does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, the Attorney General must be satisfied either that the black population percentage has not been reduced appreciably and that voting is not racially polarized or that, nevertheless, the city's electoral system will afford black citizens representation reasonably equivalent to their political strength in the enlarged community. See City of Richmond v. United States, 422 U.S. 358 (1975), and City of Rome v. United States, 466 U.S. 156 (1980). See also the Procedures for the Administration of Section 5 (28 C.F.R. 51.12(e)).

We have considered carefully the information you have provided, as well as comments and information provided by other interested parties. Our analysis shows that those annexations occurring in 1980 and earlier years, as well as the deannexation, do not have a significant effect on minority voting

-2-

strength. Accordingly, the Attorney General does not interpose any objections to those changes. 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 such changes. 28 C.F.R. 51.48.

On the other hand, the 1981 and 1982 annexations virtually doubled the population of the city by adding 2,439 whites but only seven blacks. This has resulted in a 13.7 percent reduction in the voting strength of the black community, a reduction which, in the context of the city's at-large and numbered post election system, constitutes a retrogression in the voting strength of the minority community. See City of Rome v. United States, *supra*.

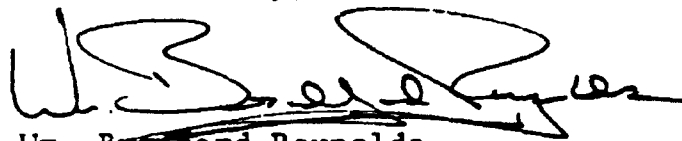
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973), and 28 C.F.R. 51.39(e). In view of the circumstances discussed above, I am unable to conclude, as I must under Section 5, that that burden has been sustained with respect to the post-1980 annexations. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the 1981 and 1982 annexations. However, should the City of Adamsville adopt an electoral system that would afford black voters a fair opportunity to realize their voting strength in the enlarged city, the Attorney General would reconsider the objection. Our analysis has shown that the adoption of a fairly drawn single-member district plan likely would afford black voters such an opportunity.

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 or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the 1981 and 1982 annexations legally unenforceable. 28 C.F.R. 51.9.

- 3 -

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Adamsville plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Bradford Reynolds', written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Ms. Leslie Satterwhite
City Clerk



U.S. Department of Justice

Washington, D.C. 20530

JUL 27 1984

J. Thomas King, Esq.
King, King & King
9131 Parkway East
Birmingham, Alabama 35206

Dear Mr. King:

This refers to the change in the method of election from at large to single-member districts; the districting plan; the establishment of five polling places; Act No. 84-740 (H.B. 25), which amends Sections 11-43-2 and 11-43-80, Code of Alabama 1975, to provide that the six-month deadline for establishing wards prior to an election be waived to comply with the Voting Rights Act; and the postponement of the July 10, 1984, election for the City of Adamsville in Jefferson County, Alabama, 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 3, 1984; supplemental information was received on July 17, 1984.

The Attorney General does not interpose any objections to the changes in question. 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 such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.42 and 51.48).

The City of Adamsville has also requested that the Attorney General reconsider his March 26, 1984, objection under Section 5 to the 1981 and 1982 annexations. In this regard, we note that the redistricting plan and related changes contained in your submission of July 3, 1984, now provide a method

-2-

election which affords the black population "representation reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, 422 U.S. 358, 370 (1975). As such, these recently submitted changes provide the basis for the withdrawal of the objection to the 1981 and 1982 annexations. Thus, pursuant to the reconsideration guidelines (28 C.F.R. 51.47), the objection interposed to these annexations to the City of Adamsville is hereby withdrawn. 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 such changes. 28 C.F.R. 51.48.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:



Gerald W. Jones

Chief, Voting Section

cc: Honorable Leand C. Adams, Jr.
Mayor

cc: Mr. O. L. Salterwhite
City Clerk



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

20 APR 1984

Philip Henry Pitts, Esq.
Pitts, Pitts & Thompson
P. O. Drawer 537
Selma, Alabama 36701

Dear Mr. Pitts:

This refers to the redistricting of councilmanic wards (Ordinance No. 83-05) for the City of Selma in Dallas County, Alabama, 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 the information to complete your submission on April 4, 1984. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

We have reviewed carefully the information you have provided along with that provided by interested third parties. According to 1980 Census data, blacks constitute 52.6 percent of the city's population and 48.5 percent of the city's voting age population. It is conceded that racially polarized voting prevails in Selma elections.

Under the interim single-member district plan, black citizens represent significant majorities in five of the ten districts and, in fact, appear to have elected representatives of their choice in each of those five districts, thus filling five of the eleven council seats. Under the proposed plan black voters would constitute a majority in two of the five double-member wards and thus would have a realistic prospect of electing candidates of their choice to only four of the eleven seats.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). A

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prohibited "effect" is one that leads to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise. See Bear v. United States, 425 U.S. 130 (1975).. Usually, such a determination is made on a comparison of the proposed plan with the "existing" plan. Here, however, the only lawful plan in existence is the court-ordered, interim plan that temporarily permits a ten single-member district configuration that cannot be legislatively continued under the city charter. In such circumstances, we cannot turn to the court-ordered plan as the benchmark for purposes of the retrogression analysis but must view the proposal in light of what reasonably can be regarded as a "fairly drawn" plan that is fully responsive to minority voting interests in the community. See Wilkes Cty., Ga. v. United States, 450 F. Supp. 1171 (D. D.C. 1978), aff'd, 439 U.S. 999 (1978).

Application of that standard here provides no clear-cut answers. Because the city charter demands five two-member districts, and given the racial housing patterns, bloc voting, and the demographics of Selma, there appears to be little practical chance of developing a configuration that will allow blacks and whites each to control five of the council's district seats. Given that reality, a "fairly drawn" plan might well be one that has two majority-white districts, two majority-black districts, and a fifth district that reflects as nearly as possible the city's voting age population. Whether such a redistricting would result in an even split of the district seats along racial lines, or favor one or the other race (6-4) would, of course, be irrelevant to the analysis, since the standard under the Voting Rights Act is, in these circumstances, a "fairly drawn" plan, not racially proportional representation.

The difficulty with the city's instant submission is that there appears to have been no real effort to develop the five districts in the manner outlined above. While two districts are majority white and another two are majority black, District 3 does not accurately reflect citywide voting age population. An alternative plan that was rejected by the council does a better job in this regard, although it, too, might require some additional modification to satisfy the Section 5 standard.

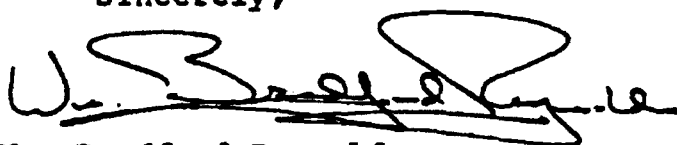
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In light of the above considerations, I am unable to conclude that the city has met its burden of showing that the submitted plan is free of discriminatory effect. In addition, there is some suggestion that the council's selection of this proposed redistricting may not have been wholly without a prohibited purpose. Therefore, on behalf of the Attorney General, I must object to the proposed redistricting of councilmanic wards for the City of Selma, Alabama.

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 this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed redistricting legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Selma plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm. Bradford Reynolds", written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Charles A. Graddick
Attorney General
250 Administrative Building
64 North Union Street
Montgomery, Alabama 36130

18 JUN 1984

Dear Mr. Attorney General:

This refers to Act No. 376, H.B. No. 1040 (1975), and Act No. 507, H.B. No. 830 (1983), which create and specify the methods by which elected officials appoint members of the racing commission in Greene County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submissions on April 19, 1984.

The Attorney General does not interpose any objection to the change embodied in Act No. 376 (1975). 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 such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

We have carefully considered the information you have provided concerning Act No. 507 (1983), as well as Census data and information provided by other interested parties. According to the 1980 Census, Greene County is 78-percent black. We note that, as a result of the latest reapportionment of the Alabama representative and senatorial districts in 1983 (Act No. 83-154), a unified Greene County has elected two blacks as its local delegation. Prior to that election, a divided Greene County had been represented by an all-white local delegation. We note further that Act No. 507 (1983) was proposed and first advertised in the Greene County Democrat, a local newspaper, on April 14, 1983, three days after the court in Burton v. Hobbie, 561 F. Supp. 1029 (D. Ala. 1983), confirmed its order requiring the special elections which brought the black representatives into office.

- 2 -

Our analysis shows that Act No. 507 (1983) removes the authority to appoint county racing commission members from the county's legislative delegation and places it with the governor. Thus, as the result of Act No. 507, the local delegation from Greene County, now consisting of two blacks, has lost its authority to appoint the members of the Greene County racing commission.

The question of whether a change in the powers of elected officials is a change subject to the preclearance provisions of Section 5 is one which has been addressed and resolved by the United States District Court for the District of Columbia in Horry County v. United States, 449 F. Supp. 990 (1978). That court, in concluding that a change such as that embodied in Act No. 507 (1983) is subject to the preclearance provisions of the 1965 Act, stated (449 F. Supp. at 995):

An alternate reason for subjecting the new method of selecting the Horry County governing body to Section 5 preclearance is that the change involved reallocates governmental powers among elected officials voted upon by different constituencies. Such changes necessarily affect the voting rights of the citizens of Horry County, and must be subjected to Section 5 requirements. Cf. Perkins v. Matthews, supra; Allen v. State Board of Elections, supra.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of showing that the submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1983); see also 28 C.F.R. 51.39(e). Our analysis shows that the change will have the proscribed effect because it is retrogressive with respect to minority voting strength within the constituency of the electorate which will elect the appointing authority after the change as compared to the minority strength in the constituency which would elect the appointing authority absent the change. Beer v. United States, 425 U.S. 130 (1976). In addition, the facts

- 3 -


surrounding the enactment of Act No. 507 (1983) strongly suggest that it was enacted with the purpose of reducing the voting strength of the black electorate in Greene County with regard to this particular governmental function previously exercised by the delegation to the state legislature.

In light of the circumstances discussed above, I am unable to conclude that the State has met its burden of showing that the change is free of the prohibited racial purpose or effect. Accordingly, on behalf of the Attorney General, I must object to the provision in Act No. 507, H.B. No. 830 (1983), which changes the method of appointing the members of the county racing commission.

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 this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the implementation of Act No. 507 (1983) legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Alabama plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Bradford Reynolds", is written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. DEPARTMENT OF JUSTICE

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 21, 1984

Michael D. Smith, Esq.
Hall, Clark & Smith
P. O. Box 790
Eutaw, Alabama 35462

Dear Mr. Smith:

This refers to the change in the method of electing councilmembers from at-large to single-member districts, the districting plan, and the additional polling place for the City of Eutaw in Greene County, Alabama, 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 initial submission on June 3, 1984; supplemental information was received on June 18 and 22, 1984.

We have carefully considered the information you have provided, as well as that provided by other interested parties, and information available from the Bureau of the Census. The Attorney General does not interpose any objection to the change from at-large elections to election from five single-member districts or to the additional polling place for the City of Eutaw. 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 such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

In considering the districting plan, we note that, according to the 1980 Census, blacks constitute 53.7 percent of the city's population. However, on the basis of information coming to our attention subsequent to your submission and confirmed by statements made during your visit on June 22, 1984, blacks constitute approximately 92.3 percent of the population in District No. 1 and approximately 100 percent of the population in District No. 2. As a result of these configurations, proposed District No. 3 is 27.7 percent black instead of 54.1 percent as indicated by your submission. Although we have contacted you repeatedly to confirm or clarify

- 2 -


the statistics that appear to result from our information, the city has failed to provide accurate information in support of the submitted plan or, in the alternative, to redefine the district boundaries so as more nearly to conform minority voting strength to the levels portrayed in your submission.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In failing to provide the Attorney General with the information necessary for the proper evaluation of this change, you have failed to sustain your burden of proof. Therefore, on behalf of the Attorney General, I must object to the implementation of the proposed districting plan for the City of Eutaw.

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 this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the implementation of the proposed districting plan legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Eutaw plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,


Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 11 1984

Lynda K. Oswald, Esq.
Assistant Attorney General
250 Administrative Building
64 North Union Street
Montgomery, Alabama 36130-1601

Dear Ms. Oswald:

This refers to Act No. 84-734 which provides for a purge and reidentification of voters in Baldwin County, Alabama, 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 the information to complete your submission on October 12, 1984.

We have reviewed carefully the information you have provided to us, as well as comments and information received from other parties. At the outset, we note that, while the concept of voter reidentification is not, per se, racially discriminatory, Congress has cautioned us to grant close scrutiny to "reregistration procedures not shown to be necessary and administered in ways that make it difficult for blacks to register." S. Rep. No. 97-417, 97th Cong., 2d Sess., 14 n.22. Thus, in reviewing Section 5 submissions of voter reidentification programs, we have examined the reasons underlying the program, and have paid particular attention to the procedures which are established to carry out the reidentification. In that regard, we have found in other Alabama counties that the potential discriminatory impact of reidentification can be avoided by allowing a substantial period of time for reidentification (e.g., Sumter and Perry Counties allowed more than one year); by giving substantial publicity to the requirement of, and procedure for, reidentification; by utilizing deputy registrars and reidentifying voters at the place at which they vote; by allowing reidentification by mail; by providing

-2-

reidentification opportunities during evening hours or on weekends; and by allowing voters the opportunity to reidentify at the polling place on election day.

We find that the reidentification proposed by Baldwin County contains few of these kind of safeguards to assure that the program does not impose an unnecessary burden on voters in general and on black voters in particular. The program was designed to be completed within only a three-month period, little publicity was built into it, deputy registrars are not intended to be utilized in it, and it appears that even those voters who voted as recently as in the November 6, 1984, election would be required to make a special appearance at the office of the probate judge to reidentify. In addition to these readily perceived deficiencies, we have been advised by the chair of the Baldwin County Board of Registrars that as of December 7, 1984, the county had not finalized its plans for implementing the reidentification process because of the press of other business. Thus, while the submitted statute requires the probate judge to visit each precinct between October 1, 1984, and December 31, 1984, to reidentify voters, no such visits have taken place and none have been planned.

In these circumstances it would appear that implementation of the reidentification procedures prescribed by the submitted statute will have an adverse impact on all voters of Baldwin County. However, black voters, who have suffered from a long history of racial discrimination in the electoral process in Alabama, may be particularly affected by the reidentification process and the resulting voter purge.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of showing that the submitted change has neither the purpose nor will have the effect of denying the right to vote on account of race or color. Georgia v. United States, 411 U.S. 526, 538-539 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). On the basis of the facts before us we cannot conclude that the state has satisfied its burden in this instance. Therefore, on behalf of the Attorney General, I must interpose an objection to the implementation of Act No. 84-734.

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

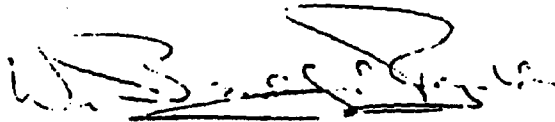
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Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the purge and reidentification of voters in Baldwin County as mandated by Act No. 84-734 legally unenforceable. 28 C.F.R. 51.9.

Although I am compelled to enter this objection, we note that the county is not precluded from continuing to purge voters pursuant to preexisting and precleared provisions of Alabama law. If implementation of such purge provisions is deemed to be inadequate, however, we are willing to give further consideration to this matter should the state or county devise a reidentification program to be administered in a manner which does not make it difficult for black citizens to reidentify.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Alabama plans to take with respect to this matter. If you have any questions, feel free to call Robert S. Berman (202-724-3100), Attorney/Supervisor of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Mr. David C. Wood
Administrator, Baldwin County
Commission

SW Obj. #2
T. 8/30/85 Re.T. 9/25 Re.T. 10/10
Re.T. 10/11 Re.T. 10/15
WBR:JKT:CGL:sw:mmw
DJ 166-02-3
D0725
J9603

October 15, 1985

Lynda Knight Oswald, Esq.
Assistant Attorney General
250 Administrative Building
64 North Union Street
Montgomery, Alabama 36130

Richard H. Ramsey, III, Esq.
Houston County Attorney
P. O. Box 1825
Dothan, Alabama 36302

Dear Ms. Oswald and Mr. Ramsey:

This refers to the permanent adoption of an at-large election system with numbered positions for the Houston County Commission and to Act No. 84-571 of the 1984 Alabama Legislature, prescribing four candidate residency districts and an at-large chair for the County Commission of Houston County, Alabama, submitted pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. The submission of the adoption of an at-large system initially was received on June 9, 1980; we requested additional information on July 24, 1980. The submission of Act No. 84-571 was received on June 29, 1984; additional information was received on July 25 and August 22, 1985, and we received notification that the information was intended to pertain to both changes on September 11, 1985.

To obtain the requested Section 5 preclearance the submitting authority has the burden of showing that the submitted voting changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); Beer v. United States, 425 U.S. 130, 141 (1976); 28 C.F.R. 51.39(c).

- 2 -

In carrying out our analysis, we have given careful consideration to the materials you have submitted, as well as information and comments from other interested parties. We note that over 22 percent of Houston County's population is black and that black citizens began to register to vote in substantial numbers shortly before the county decided to adopt the at-large election structure. Under the at-large structure no black candidate has been elected to the county commission and a strong pattern of racial bloc voting in local contests seems to exist. At the same time, the county's black population is highly concentrated, so that under a neutrally apportioned single-member district election plan it is likely that in one district black citizens would constitute a substantial majority of the population.

Under these circumstances, the at-large system, whether with numbered positions as originally implemented, or with candidate residency requirements, as provided for in Act No. 84-571, does not offer black voters an opportunity to participate in the electoral process comparable to that which would be afforded if the county were to utilize a neutrally apportioned single-member district election system.

In addition, the information submitted reveals that both the county's determination to use the at-large system on a permanent basis and the adoption of the 1984 provision for candidate residency districts occurred with no opportunity for effective black participation. We also understand that the 1984 enactment actually resulted from an aborted effort to return to a single-member district election plan which, for unexplained reasons, was converted to an at-large election plan during the legislative process.

- 3 -

In light of the considerations discussed above I cannot conclude that the Section 5 burden has been sustained in this instance. Accordingly, I must, on behalf of the Attorney General, object to the permanent adoption of the at-large election system with numbered positions, and to Act No. 84-571 which continues at-large elections with four candidate residency districts.

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 or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the changes in the method of election legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Houston County and the State of Alabama plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 21, 1985

Honorable John C. Jay, Jr.
Mayor
P. O. Drawer 1
Greensboro, Alabama 36744-0573

Dear Mayor Jay:

This refers to the January 22, 1985, deannexation from the City of Greensboro in Hale County, Alabama, 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 the information to complete your submission on August 21, 1985.

We have considered carefully the materials you have submitted, as well as information and comments from other interested parties. Information available to us indicates that there is a long history of discrimination against black citizens in Greensboro, that racial bloc voting in local elections exists, and that there is an absence of black elected officials in the municipality. With respect to the instant change, we note that the city voted to deannex the property shortly after it became known that subsidized public housing would be built on the property and that there was a strong perception in both the white and black communities that such housing would be occupied largely or exclusively by black persons, most of whom likely would come from other areas within the city. At the same time, we note the city's contemporaneous refusal to change its electoral system so as to allow greater opportunities for effective black participation in the city's electoral process.

These circumstances suggest that the deannexation involved here likely would result in the ultimate removal of a significant number of potential black voters from the city. Moreover, the city's decision apparently was made in direct response to resistance on the part of white voters to having

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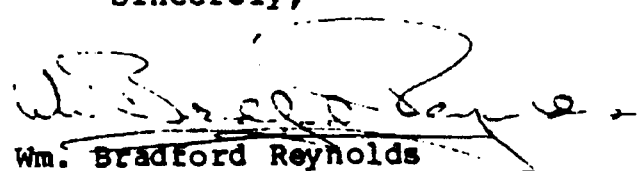
the area rezoned for subsidized public housing and such racially motivated action is unacceptable. You have not provided additional information which might establish a nonracial basis for the city's actions.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the deannexation.

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 this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the deannexation legally unenforceable as it would affect the voting rights of persons anticipated to become residents of that area. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Greensboro plans to take with respect to this matter. If you have any questions, feel free to call John K. Tanner (202-724-8388), Attorney-Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,


Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division
:



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

February 10, 1986

Cartledge W. Blackwell, Jr., Esq.
Hugh A. Lloyd, Esq.
Blackwell & Keith
P. O. Box 592
Selma, Alabama 36702

Dear Messrs. Blackwell and Lloyd:

This refers to the increase in the number of members from five to six, the election of members from five single-member districts with one at-large position, and the districting plan for the county commission and the county board of education in Marengo County, Alabama, 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 initial submission on January 13, 1986; supplemental information was received on January 22, 1986.

We have considered carefully the information you have provided, as well as comments and information from other sources and interested parties. We recognize, of course, that the submitted voting changes had their genesis in findings and conclusions by federal courts that the existing at-large election structure is violative of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, in that it denies black citizens an opportunity equal to that afforded white citizens to participate in the political process and to elect candidates of their choice to office. United States v. Marengo County Commission, 731 F.2d 1546 (11th Cir. 1984), on remand, Civ. Nos. 78-455-H and 78-474-H (S.D. Ala. Sept. 5, 1985). In order to obtain preclearance pursuant to Section 5, the county must demonstrate that the submitted voting changes "[do] not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. See also, Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)).

The submitted voting procedures, when compared to the at-large election structure, obviously will enhance the

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opportunity for effective black political participation and thus will not have a discriminatory effect within the meaning of Section 5. Beer v. United States, 425 U.S. 130, 141 (1976). At the same time, however, "[i]n a case where lines are drawn to establish discrete electoral units and to distribute racial ... populations among districts, the ways in which these lines are drawn may become independent indicia of discriminatory intent" (Ketchum v. Byrne, 740 F.2d 1398, 1405 (7th Cir. 1984)), and we have received allegations that a primary purpose of the submitted voting procedures was to minimize, to the extent possible in light of the established Section 2 violation, the opportunity for effective political participation by black citizens.

Information provided by the submitting authority alleges that the configuration of the proposed single-member districts results from an effort to balance population and to avoid, to the extent possible, splitting census enumeration districts. Our own analysis, however, reveals that the proposed plan splits 10 of the 25 census enumeration districts within Marengo County and yet the boundaries of the districts remain contorted. Moreover the contorted shapes of the districts needlessly fragment black residential concentrations in Demopolis and in the southern portion of the county, thereby insuring that the redistricting will not fairly reflect black voting strength. Cf. Ketchum v. Byrne, supra, 740 F.2d at 1409. Finally, the proposal insists on retaining an at-large position, notwithstanding the conclusion that black citizens in Marengo County do not have a fair opportunity to participate effectively in the at-large structure (see City of Port Arthur v. United States, 459 U.S. 157, 168 (1982)).

An alternative plan submitted on behalf of black citizens for the county's consideration contained more compact districts, and also demonstrated that it is necessary to split few, if any, census enumeration districts to obtain population equality. That plan, which projected a substantial black voting age majority in two districts and a slight black voting age majority in another district, apparently received little consideration from county officials. In that regard, we are aware that black citizens of the county repeatedly have requested the opportunity for input in the plan-drawing process but the submitted plan was devised without input from representatives of the black community.

In these circumstances, the county has not shown and I cannot conclude that the submitted voting procedures were devised without the purpose of denying or abridging the right

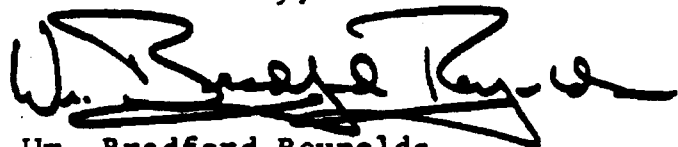
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to vote on account of race. See, e.g., Busbee v. Smith, 549 F. Supp. 494 (D. D.C. 1982), aff'd, 459 U.S. 1166 (1983). Therefore, on behalf of the Attorney General, I must object to the changes submitted.

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 or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the increase in the number of members and the submitted election and districting plan for the Marengo County Commission and Board of Education legally unenforceable. 28 C.F.R. 51.9.

In view of the pending vote dilution litigation, we are forwarding a copy of this letter to the Honorable W. B. Hand. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds", with a stylized flourish at the end.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

June 2, 1986

Cartledge E. Blackwell, Jr., Esq.
Blackwell and Keith
P. O. Box 592
Selma, Alabama 36702

Dear Mr. Blackwell:

This refers to the election of members from four single-member districts and the districting plan for the county commission in Dallas County, Alabama, 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 April 1, 1986.

We have considered carefully the information you have provided, as well as comments and information from other sources and interested parties. We are aware, of course, that the submitted voting changes were developed in response to the order of the federal district court which found that the county's existing at-large structure for electing county commissioners violates Section 2 of the Voting Rights Act, as amended. In order to obtain preclearance pursuant to Section 5, the county must demonstrate that the submitted voting changes "[do] not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. See also Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)).

The submitted plan changes the method of electing the four commissioners from an at-large election system with residency districts to a single-member district system. This plan, when compared to the existing at-large election system, will enhance the opportunity for black political participation, and therefore is not retrogressive within the meaning of Section 5. Beer v. United States, 425 U.S. 130, 141 (1976). The county must, however, also demonstrate the absence of discriminatory purpose in the enactment of

- 2 -

the proposed election plan. City of Richmond v. United States 422 U.S. 358, 378-379 (1975); see also Busbee v. Smith, 549 F. Supp. 494 (D. D.C. 1982), aff'd, 459 U.S. 1166 (1983).

At the outset, we note that the county commission did not present the proposed districting plan for public consideration and comment, but limited public hearings to general redistricting considerations. The black community thus had no input into or opportunity to comment on this proposed plan prior to its adoption by the commission.

In addition, as we earlier advised you, the proposed plan fragments the black community in the Craig Field area by splitting the existing precinct (5-1) and placing the boundary line for Districts 1 and 4 between two predominantly black low-income housing projects. We have received allegations that this fragmentation was designed to aid the white incumbent in that area by excluding from District 1 an announced black candidate, who resides at Craig Field, along with a sizeable, politically active, black population concentration that has developed there since the compilation of the 1980 Census. No nonracial explanation for the seemingly illogical exclusion of this area from District 1 has been offered. While efforts to protect incumbency do not conclusively evidence discriminatory purpose, the circumstances here suggest that the county commission's actions were motivated, at least in significant part, by racial considerations. See, e.g., Ketchum v. Byrne, 740 F.2d 1398, 1405 (7th Cir. 1984).

For these reasons, I cannot conclude that the county has met its burden of showing that the submitted election plan was not enacted with the intent to deny or abridge the right to vote of black citizens of Dallas County. Accordingly, on behalf of the Attorney General, I must interpose an objection to the plan.

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 or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment

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from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the election of members of the Dallas County Commission from four single-member districts as proposed in the submitted districting plan legally unenforceable. 28 C.F.R. 51.9.

In view of the pending litigation, we are forwarding a copy of this letter to the Honorable W. B. Hand. If you have any questions, feel free to call Steven H. Rosenbaum (202-724-6718), Acting Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm. Bradford Reynolds", is written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

AUG 1 1986

Cartledge R. Blackwell, Jr., Esq.
Blackwell and Keith
P. O. Box 592
Selma, Alabama 36702

Dear Mr. Blackwell:

This refers to your request that the Attorney General reconsider the June 2, 1986, objection under Section 5 of the Voting Rights Act of 1965, as amended, to the districting plan adopted by the county for the election of the county commission in Dallas County, Alabama. We received your letter on June 23, 1986.

We have reviewed carefully all of the information and arguments provided by you, as well as information received from other interested parties and that obtained through observations made by our own staff. We remain unpersuaded, however, that the submitted districting plan is entitled to preclearance.

At the outset, we note that the arguments set forth in your letter are not materially different from those provided previously. We pointed out in our objection that your proposal unnecessarily fragmented the black community at Craig Field by splitting the existing precinct (5-1)--thereby fracturing the black residential concentration in that area between Districts 1 and 4. While you have asserted in your reconsideration request that the black community residing in the Craig Field/USF Homes area is not significant either in population or in its concentration and contiguity, the geographic and demographic information before us belies such an assertion. Nor did we find any support for your position among those persons who reside in the area.

-2-

Even more disturbing with regard to the proposed plan were assertions that a central purpose for the boundary between Districts 1 and 4 was the protection of a white incumbent from the prospect of running against a viable, competitive black candidate in circumstances where the black candidate would have had a realistic opportunity to win. While other explanations were offered on reconsideration, the county failed to meet its burden of showing that the incumbency considerations were not in fact intertwined with racial motivations. Where, as here, the county has implicated a racially discriminatory purpose in the districting process, we cannot grant Section 5 preclearance to the proposed election plan. Accordingly, the considerations leading to the June 2, 1986 objection remain and, on behalf of the Attorney General, I must decline to withdraw the objection.

Of course, as noted in our earlier letter, Section 5 permits you 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 or color, irrespective of whether an objection has been interposed by the Attorney General. However, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the districting plan in question unenforceable. See also 24 C.F.R. 31.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Dallas County plans to take with respect to this matter. In view of the pending litigation, we are forwarding a copy of this letter to the Honorable W.B. Hand. If you have any questions, feel free to call Sandra S. Coleman (202-724-6719), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 6 1986

Robert A. Wills, Esq.
City Attorney
P. O. Box 547
Bay Minette, Alabama 36507

Dear Mr. Wills:

This refers to the three annexations (Act No. 85-594, Act No. 298 (1973), and Act No. 744 (1965)) to the City of Bay Minette in Baldwin County, Alabama, 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 the information to complete your submissions on August 7, 1986.

We have considered carefully the information you have provided along with information and comments received from other interested parties and relevant Bureau of the Census data. In reviewing annexations, we are required to analyze their effect from the perspective of the "most current available population data." City of Rome v. United States, 446 U.S. 156, 186 (1980). Our analysis of the information received concerning Bay Minette indicates that almost all of the persons living within the three annexed areas are white, and from all that we can determine, it would appear that the annexations decrease the black population percentage in the city by approximately five percent. This decrease is significant because it occurs in the context of a city whose council is chosen through an at-large election system characterized by racially polarized voting. In that regard, we note that since 1965 there have been nine black candidacies for municipal office but none have been successful.


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Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that submitted changes do not have a discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Under City of Richmond v. United States, 422 U.S. 358, 371 (1975), annexations that result, as here, in a significant decrease in the minority proportion of a city's population have such an effect and may pass Section 5 muster only if the method utilized for electing the city's governing body "fairly reflects the strength of the minority community as it exists after the annexation." In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city has carried its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the voting changes occasioned by the three annexations submitted by the City of Bay Minette.

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 or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the annexations legally unenforceable insofar as they have an effect on voting in Bay Minette. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Bay Minette plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Attorney/Reviewer in the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Charles E. Bailey
Mayor
P. O. Box 552
Alexander City, Alabama 35010

DEC 1 1986

Dear Mayor Bailey:

This refers to the two annexations (Act No. 208 (1969) and Act No. 86-21) to the City of Alexander City in Tallapoosa County, Alabama, submitted to the Attorney General for the required review pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submissions on October 3, 1986.

We have considered carefully the information you have submitted, data from the 1970 and 1980 Censuses, and information from other interested parties. At the outset, we note that black voters have been unable, until 1984, to elect a candidate of their choice to the city council even though a number of such candidates have sought council positions over the years. This appears in substantial part to be the result of a general pattern of racially polarized voting occurring in the context of the city's electoral system which is characterized by at-large voting, numbered posts, and a majority vote requirement.

Even so, our analysis shows that the 1969 annexation, adding as it does, only about 210 persons to the city, does not have a significant effect on minority voting strength, particularly when viewed against the later annexation precleared by the Attorney General in 1979 which added some 500 or more persons, 60 percent of whom were black. Accordingly, the Attorney General does not interpose any objection to the voting changes occasioned by that annexation. 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 such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

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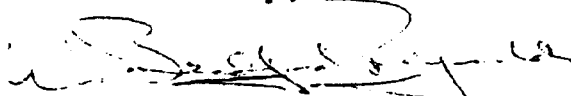
On the other hand, the effect of the 1986 annexation is to reduce the total black population of the city from 27.4 percent to 25.5 percent, a reduction which serves to make it even more difficult for blacks to elect a candidate of their choice and to enhance the ability of the white majority to exclude blacks totally from participation in the governing of the city through membership on the council. Absent an electoral system, not here existent, which fairly reflects the strength of the minority community as it exists after the annexation, such an effect is not permissible under the Voting Rights Act. See Beer v. United States, 425 U.S. 130 (1976); City of Richmond v. United States, 422 U.S. 358, 370 (1975).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1986 annexation insofar as it affects voting rights.

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 none of these changes has either the purpose or will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the annexation accomplished by Act No. 86-21 legally unenforceable with regard to voting. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Alexander City plans to take with respect to this matter. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8388), attorney reviewer in the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Larry T. Menefee, Esq.
Blacksher, Menefee & Stein
Fifth Floor Title Building
300 21st Street, North
Birmingham, Alabama 35203

FEB 3 1987

Dear Mr. Menefee:

This refers to the August 2, 1967, annexation; the two 1971 deannexations (Act No. 58, H.B. No. 450 and Act No. 793, H.B. No. 1401 (1971)); the two 1972 annexations (Act No. 826, H.B. No. 1402 and Act No. 303, H.B. No. 231 (1972)); and other voting changes effected by State Act No. 58 (1971) for the City of Prichard in Mobile County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We initially received information relating to your submissions on September 2, 1986; supplemental information was received on October 8, November 13, November 17, December 2, and December 5, 1986.

With regard to the 1967 annexation; the two annexations accomplished by Act No. 826, H.B. 1402, and Act No. 303, H.B. No. 231 (1972); and the deannexation accomplished by Act No. 793, H.B. No. 1401 (1971), the Attorney General does not interpose any objections. 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 such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to Act No. 58 and the 1971 deannexation that resulted from that act, we have been unable to reach the same conclusions. In that respect we note that, according to information provided by you and other interested parties, the impetus behind this deannexation effort was in large part

- 2 -

racially based and this information remains unrebutted. While an ordinary deannexation completed pursuant to applicable state law which increases the proportion of municipal black voters would not likely run afoul of Section 5 of the Voting Rights Act (even if voters considered the racial composition of the city), that is not all that is involved in these submissions. Act No. 58 was specially designed to restrict participation in the electoral phase of the deannexation to white voters desiring to leave Prichard, thus eliminating participation of the increasingly active black electorate as regularly allowed by Alabama law. This special election procedure has not been demonstrated to be free of racially discriminatory purpose or effect as required by Section 5. Obviously, a deannexation conducted pursuant to a procedure that has not been cleared is itself not entitled to preclearance.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to State Act No. 58 and the resulting deannexation.

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 or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make State Act No. 58 and the 1971 deannexation legally unenforceable. 28 C.R.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Prichard plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202/724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Ms. Gladys D. Prentice
City Clerk
P. O. Box 126
Leeds, Alabama 35094

MAY 4 1987

Dear Ms. Prentice:

This refers to the 29 annexations (November 5, 1985; January 14, 1986; Ordinance Nos. 501-510, 512, 516, 517, 522 (1985); 523-529, 533, 535-536, 540, 542, 544 (1986)); the deannexation (Ordinance No. 539 (1986)); and the procedures for conducting the November 5, 1985, and January 14, 1986, referendum elections for the City of Leeds in Jefferson, St. Clair, and Shelby Counties, Alabama, 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 initial submissions on February 26, 1987; supplemental information was received on March 3, 1987.

With regard to the deannexation and the procedures for conducting the two specified elections, the Attorney General does not interpose any objections. 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 such changes. See Section 51.41 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)).

With regard to the 29 annexations, we have considered carefully the information you have provided, data from the 1970 and 1980 Censuses, and information from other interested parties. At the outset, we note that black voters appear to support black candidates but have been unable, with one exception, to elect a candidate of their choice to the city council even though a number of such candidates have sought council positions over the years. This appears in substantial part to be the result of a general pattern of racially polarized voting occurring in the context of the city's electoral system which is characterized by at-large voting, numbered positions, and a

-2-

majority vote requirement. With regard to the one successful black candidate, we note that, apparently as a result of that same bloc voting phenomenon, he was defeated for reelection in 1980 but that he was again successful in the 1984 election which, we understand, occurred after black residents indicated that they were considering a court challenge to the city's at-large election system. Thus, the success of candidates preferred by black voters appears to be completely at the sufferance of the white majority.

The effect of the 29 annexations is to reduce the total black population of the city from 18.5 to 15.2 percent, a reduction that serves to make it even more difficult for blacks to elect a candidate of their choice and to enhance the ability of the white majority to exclude blacks totally from participation in the governing of the city through membership on the council. Absent an electoral system, not here existent, which fairly reflects the strength of the minority community as it exists after the annexations, such an effect is not permissible under the Voting Rights Act. See Beer v. United States, 425 U.S. 130 (1976); City of Richmond v. United States, 422 U.S. 358, 370 (1975).

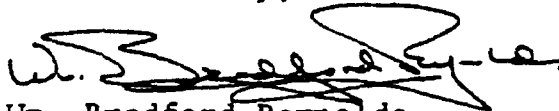
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.52(a) (52 Fed. Reg. 497-498 (1987)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 29 annexations insofar as they affect voting rights.

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 none of these changes has either the purpose or will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines (52 Fed. Reg. 496-497 (1987)) permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the 29 annexations legally unenforceable with regard to voting. See Section 51.10 (52 Fed. Reg. 492 (1987)).

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To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Leeds plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Bradford Reynolds", with a stylized flourish at the end.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 23, 1988

Ms. Gladys D. Prentice
City Clerk
P. O. Box 126
Leeds, Alabama 35094

Dear Ms. Prentice:

This refers to the change in the method of election from at large to single-member districts, the districting plan, and the implementation schedule, adopted pursuant to the consent decree in Dillard v. Crenshaw County, C.A. No. 85-T-1332-N (M.D. Ala.), and the reconsideration of the May 4, 1987, objection to twenty-nine annexations to the City of Leeds in Jefferson, St. Clair, and Shelby Counties, Alabama, 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 initial submission on March 4, 1988; supplemental information was received on March 24, 1988.

The Attorney General does not interpose any objections to the change in the method of election, the districting plan, or the implementation schedule. In addition, because the changes being precleared at this time provide a method of election which affords the minority group "representation reasonably equivalent to their political strength in the enlarged community" (City of Richmond v. United States, 422 U.S. 358, 370 (1975)), the objection interposed on May 4, 1987, to twenty-nine annexations to the city is hereby withdrawn. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.46). 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 such changes. See also 28 C.F.R. 51.41.

Sincerely,

A handwritten signature in cursive script, reading "James P. Turner", is written over a horizontal line.

James P. Turner
Acting Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 5, 1987

George Azar, Esq.
City Attorney
P. O. Box 2028
Montgomery, Alabama 36197-1101

Dear Mr. Azar:

This refers to the January 7, 1965, city council resolution which establishes a city school system and its governing board of education for the City of Marion in Perry County, Alabama, 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 January 5, 1987; supplemental information was received on March 6, 1987.

We have considered carefully the information you have provided as well as Census data and information provided by other interested parties. We note, at the outset, that prior to the city council's action by resolution on January 7, 1965, the Perry County school district operated all public schools in the county, including those within the City of Marion. By virtue of the changes occasioned by the 1965 resolution, the governance of schools located within the City of Marion was removed from the county school board and placed under a city school board. County school board members were then and still are elected by the entire county whose population is 60 percent black. Members of the city school board are appointed by the city council, whose members are elected by the city which is 48 percent black.

A review of voting changes that occurs over twenty years after the fact presents complex issues. At the time of this change in 1965, jurisdictions in this part of Alabama were frequently involved in taking steps to avoid school desegregation and to delay effective black political participation, and there are some historical indications that the establishment of the Marion city school system and the method selected for choosing its board members were motivated in part by such considerations.

-2-

It is also true, however, that since that time black residents in Marion and Perry County have significantly expanded their participation in local political affairs. In fact, we are advised that there is presently an effort to reconsolidate the city and county school systems to improve efficiency and education that has broad-based support by both black and white groups. Such a restoration would, of course, cure any lingering impact on voting occasioned by the original establishment of the city school system.

Under Section 5 of the Voting Rights Act, submitted changes must be reviewed for racial purpose and effect with the submitting authority having the burden of satisfying the Attorney General that the change--even one this old--is free of discrimination. See Georgia v. United States, 411 U.S. 526 (1973); see also Subpart F of the Procedures for the Administration of Section 5 (52 Fed. Reg. 497-499 (1987)). We note that the recent change to a single-member district method of election for the city council (the selecting authority for the city school board), precleared by the Attorney General on April 29, 1987, incorporates the approach presently available to ameliorate to some degree the present racial effect of the method of choosing city school board members adopted and in use since 1965. Nevertheless, it appears that this method of selecting the school board is still less advantageous to blacks than the county-wide elections it replaced and the allegations of racial purpose in adoption have not been adequately rebutted.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that in this instance the city has sustained its burden under Section 5. See City of Richmond v. United States, 422 U.S. 358, 378-79 (1975) (jurisdiction must establish lack of purpose and effect under Section 5). Therefore, on behalf of the Attorney General, I must object to the implementation of the January 7, 1965, resolution creating the separate school district in the City of Marion.

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 this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court

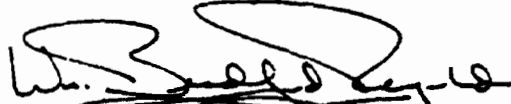
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is obtained, the effect of the objection by the Attorney General is to make further implementation of the city school system legally unenforceable. Section 51.10 (52 Fed. Reg. 492 (1987)).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Marion plans to take with respect to this matter. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8290), Attorney Reviewer of the Section 5 Unit of the Voting Section.

Because this matter is in issue in Robinson v. Alabama State Department of Education, No. 86-T-569N (M.D. Ala), we are providing a copy of this letter to the court in that case.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm. Bradford Reynolds", is written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Honorable Myron Thompson
United States District Court Judge



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

June 1, 1987

John E. Pilcher, Esq.
Pilcher & Pilcher
P. O. Box 1346
Selma, Alabama 36702-1346

Dear Mr. Pilcher:

This refers to the election of board of education members from five single-member districts and the districting plan for the board in Dallas County, Alabama, 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 March 31, 1987.

We have considered carefully the information you have provided, as well as comments and information from other sources and interested parties. We are aware, of course, that the submitted voting changes were developed in response to the order of the federal district court which found that the board of education's existing at-large structure for electing board members violates Section 2 of the Voting Rights Act, as amended. In that context, we find nothing to suggest that the adoption of the single-member district method of election was driven by any racially discriminatory purpose and, if fairly implemented, that method of election would enhance the potential for blacks to participate equally in the electoral process. Consequently, the Attorney General does not interpose any objection to the change in the method of election. 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 such change. See Section 51.41 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)).

With regard to the districting plan adopted by the board to implement the changed method of election, we do not reach a similar conclusion. At the outset, we note that the board of education held several hearings at which blacks were allowed to express their concerns to the board regarding the proposed districting plan. Unfortunately, these hearings appear to have served no purpose, since we understand that the districting plan was adopted as initially proposed with no apparent consideration or accommodation being given to the comments made

-2-

by blacks in attendance. Indeed, our information is that the demographer who drafted the plan was not even informed of the suggestions raised by black residents of the school district. Yet, as we understand it, the board was not only aware of these concerns but, in light of them, agreed repeatedly at the hearings that a fair five-district plan should provide for two predominantly black districts and a third constituting an effective swing district. In spite of this, the plan submitted by the board overly concentrates blacks into District 4 and fragments the remaining black population in Selma between Districts 2 and 5 resulting in a plan that minimizes the opportunity for blacks to participate equally in the electoral process. Even so, you have declined to provide any nonracial justification for the submitted configuration.

Finally, we understand that these districts were drawn to protect incumbent board members. While efforts to protect incumbency do not, per se, evidence discriminatory purpose, the circumstances here suggest that the county school district's actions were motivated, at least in significant part, by racial considerations. See, e.g., Ketchum v. Byrne, 740 F.2d 1398, 1405 (7th Cir. 1984).

In order to obtain the required preclearance pursuant to Section 5, the board of education must demonstrate that the submitted voting changes "[do] not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. See also Georgia v. United States, 411 U.S. 526 (1973); Section 51.52 of the guidelines (52 Fed. Reg. 497-498 (1987)). In view of the considerations discussed above, I cannot conclude that the board of education has met its burden of showing that the submitted plan was not enacted for the purpose of denying or abridging the right to vote of the black citizens of the Dallas County School District. Accordingly, on behalf of the Attorney General, I must interpose an objection to the districting plan as drawn.

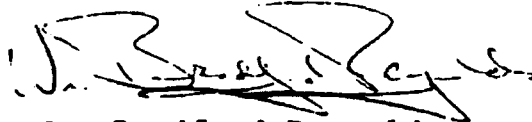
Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines (52 Fed. Reg. 496 (1987)) permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General

-3-

is to make the election of members of the Dallas County Board of Education from the five single-member districts as proposed in the submitted districting plan legally unenforceable. See Section 51.10 (52 Fed. Reg. 492 (1987)).

In view of the pending litigation, we are forwarding a copy of this letter to the Honorable W. B. Hand. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds", is written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 15, 1988

David R. Boyd, Esq.
Balch & Bingham
P. O. Box 78
Montgomery, Alabama 36101

Dear Mr. Boyd:

This refers to the adoption of a multimember district method of election for the city council, the proposed districting plan, the September 22, 1987, annexation referendum and annexation pursuant to Act No. 87-772, the January 12, 1988, special election and the February 8, 1988, annexation (Ordinance No. 641) to the City of Roanoke in Randolph County, Alabama, 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 the information to complete your submission on February 22, 1988.

We have given careful consideration to the information you have provided, as well as information and comments from other interested parties. At the outset, we note that the proposed election system and districting plan apparently are the outgrowth of the consent decree entered by the court in United States v. City of Roanoke, C.A. No. 87-V-97-E (M.D. Ala.) last July. That decree required the city to abandon the existing at-large election system and to adopt a districting system which was to be devised through a public process. We note further that prior to adopting the proposed election system, city officials in fact did conduct a series of meetings with members of the local black community on the structure and configuration of such a plan, that the focus at all times was on a plan of five single-member districts, and that a consensus actually was reached on a specific single-member plan denoted as Plan 6.

Despite these negotiations and public statements by a majority of the council favoring a single-member plan, the city unexplainedly adopted the instant multimember plan which essentially segregates the city into two parts by creating an overwhelmingly white three-member district, and a heavily black two-member district. Even though it creates a majority black district, the plan seems calculated to limit the effectiveness of the sizeable black constituency in that, while it "allows for minority representation, the nature of the plan places them in a special category which would make it inherently difficult to

- 2 -

effectively represent their constituency." League of United Latin American Citizens v. Midland Independent School District, 648 F. Supp. 596, 608 (W.D. Tex. 1986). Thus, the 3-2 plan seems calculated to operate to minimize the political influence of the growing black population in Roanoke by limiting it to the election of representatives whose effectiveness on the council would necessarily be nullified by the cohesive white majority which the plan itself assures.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that submitted voting changes have no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52(a)). In view of the observations noted above, the long history of purposeful discrimination in Roanoke, the unusual procedural departures in adopting the system now under review, and the absence of an adequate explanation, I cannot conclude that the city has carried its burden with respect to the proposed method of election or the districting plan. Accordingly, I must, on behalf of the Attorney General, interpose objections to the adoption of the multimember system and the specific plan.

I also must interpose an objection to the proposed annexations. Based on the information available to us, it appears that areas with a substantial black population were excluded from the annexations even though they fully met the annexation criteria established by the city. At the same time, white-populated areas were annexed even though they appear significantly less desirable according to the stated criteria. Under the totality of circumstances, then, I cannot find that the city has met its burden of showing that Roanoke did not "annex adjacent white areas while applying a wholly different standard to black areas and failing to annex them based on that discriminatory standard." See City of Pleasant Grove v. United States, 55 U.S.L.W. 4133, 4135 (U.S. Jan. 21, 1987).

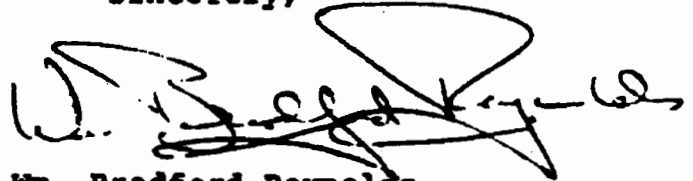
Finally, both the September 22, 1987, annexation referendum, which was limited to the racially restricted constituency, and the January 12, 1988, special election, in which residents of the annexed area were allowed to participate in violation of the Voting Rights Act, necessarily are infected by the discriminatory purpose on which the annexation itself appears to have been based. Accordingly, an objection under Section 5 must be interposed to those changes as well.

- 3 -

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 or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objections. However, until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objections by the Attorney General is to make the proposed election system, annexations and referenda legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Roanoke plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read 'W. Bradford Reynolds', with a large, stylized flourish extending from the end of the signature.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

DJ 166-012-3
W0121

December 19, 1988

Michael S. Harper, Esq.
Hornsby & Schmitt
P. O. Box 606
Tallassee, Alabama 36078

Dear Mr. Harper:

This refers to Ordinance No. 86-213 which revises the procedures for annexation to the City of Tallassee in Elmore and Tallapoosa Counties, Alabama, 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 the information to complete your submission on October 20, 1988.

We have reviewed carefully the information you have provided, as well as Census data and comments from other interested parties. At the outset, we note that the proposed procedures require petitioners for annexation to hire both a licensed attorney and a professional engineer or land surveyor and, thus, would entail substantially higher costs than the existing procedures. We note further, from 1980 Census data, that black and white residents of Elmore and Tallapoosa Counties are not similarly situated socio-economically, with blacks lagging significantly behind whites in income, education, and occupational status.

In our view, these factors are of particular relevance here since the proposed procedures appear to have been adopted at a time when an annexation petition by residents of the predominantly black East Tallassee area had been pending before the city council for several months and despite the fact that this largely black group of petitioners had experienced difficulty complying even with existing procedures. In fact, it is our understanding that, when the city eventually responded to the petitioners, they were given only 30 days in which to meet the existing requirements even though that included getting detailed information relative to an estimated 124 households. In the process, we understand that the city declined to provide to the petitioners specific property owner information in its possession that formed the basis for rejecting the petition--and

-2-

was informed that any subsequent petition would be subject to the new procedures. Moreover, even though the city has been fully aware for some time of the interest in this area to be annexed, the city apparently has declined to exercise its option under state law to annex, of its own motion, persons, such as the rejected group of predominantly black applicants from East Tallassee, who wish to become citizens of Tallassee but who have difficulty satisfying the petition requirements.

In this setting, then, we cannot ignore the fact that the proposed procedures make no provision for economically disadvantaged applicants and that the city has declined to consider reasonable alternative procedures that would appear to satisfy the city's stated legitimate goals regarding annexations without imposing undue hardship upon the less affluent. In that regard, we note that, in comparable circumstances, the City of Northport, Alabama, which initially proposed an annexation ordinance similar to Ordinance No. 86-213, later amended it to eliminate requirements such as those that are of particular concern here.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52(c)). In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Ordinance No. 86-213 insofar as it imposes annexation requirements which would appear unnecessarily to hinder the ability of black citizens in the Tallassee area to annex themselves to the city.

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 this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make Ordinance No. 86-213 legally unenforceable. 28 C.F.R. 51.10.

-3-

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Tallassee plans to take with respect to this matter. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8290), Attorney-Reviewer in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 19, 1988

Michael S. Harper, Esq.
Hornsby & Schmitt
P. O. Box 606
Tallassee, Alabama 36078

Dear Mr. Harper:

This refers to Ordinance No. 86-213 which revises the procedures for annexation to the City of Tallassee in Elmore and Tallapoosa Counties, Alabama, 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 the information to complete your submission on October 20, 1988.

We have reviewed carefully the information you have provided, as well as Census data and comments from other interested parties. At the outset, we note that the proposed procedures require petitioners for annexation to hire both a licensed attorney and a professional engineer or land surveyor and, thus, would entail substantially higher costs than the existing procedures. We note further, from 1980 Census data, that black and white residents of Elmore and Tallapoosa Counties are not similarly situated socio-economically, with blacks lagging significantly behind whites in income, education, and occupational status.

In our view, these factors are of particular relevance here since the proposed procedures appear to have been adopted at a time when an annexation petition by residents of the predominantly black East Tallassee area had been pending before the city council for several months and despite the fact that this largely black group of petitioners had experienced difficulty complying even with existing procedures. In fact, it is our understanding that, when the city eventually responded to the petitioners, they were given only 30 days in which to meet the existing requirements even though that included getting detailed information relative to an estimated 124 households. In the process, we understand that the city declined to provide to the petitioners specific property owner information in its possession that formed the basis for rejecting the petition--and

- 2 -

was informed that any subsequent petition would be subject to the more demanding new procedures. Moreover, even though the city has been fully aware of the annexation interest in this area since 1985, the city apparently has declined to exercise its option under state law to annex, of its own motion, persons, such as the rejected group of predominantly black applicants from East Tallassee, who wish to become citizens of Tallassee but who have difficulty satisfying the petition requirements.

In this setting, then, it becomes relevant that the proposed procedures make no provision for economically disadvantaged applicants and that the city has declined to consider reasonable alternative procedures that would appear to satisfy the city's stated legitimate goals regarding annexations without imposing undue hardship upon the less affluent. In that regard, we note that, in comparable circumstances, the City of Northport, Alabama, which initially proposed an annexation ordinance similar to Ordinance No. 86-213, later amended it to eliminate requirements such as those that are of particular concern here. We are advised that only Tallassee among Alabama cities now requires annexation petitioners to retain attorneys and surveyors or engineers.

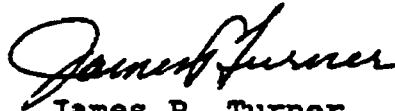
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52(c)). In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Ordinance No. 86-213 insofar as it imposes annexation requirements which would appear unnecessarily to hinder the ability of black citizens in the Tallassee area to annex themselves to the city.

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 this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make Ordinance No. 86-213 legally unenforceable. 28 C.F.R. 51.10.

-3-

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Tallahassee plans to take with respect to this matter. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8290), Attorney-Reviewer in the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "James P. Turner".

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 12 1989

Larry Anderson, Esq.
City Attorney
P. O. Box 2128
Dothan, Alabama 36302

Dear Mr. Anderson:

This refers to the following matters submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, as amended, 42 U.S.C. 1973c:

1. Act No. 88-445, as amended by Act No. 88-331, which enables Class 5 municipalities to adopt the mayor-commissioner-city manager form of government to be governed by a mayor elected at large and commissioners elected from single-member districts; provides that there shall be four single-member districts with the districting plan to be enacted by local ordinance; specifies the powers and duties of the mayor (including a full vote on the commission); provides that officials are to be elected to four-year, staggered terms in nonpartisan elections with a majority vote requirement; specifies the date for general and runoff elections; provides an initial implementation schedule; provides for candidate qualification procedures and eligibility provisions, the method of filling vacancies, and recall procedures; and specifies the procedure for abandoning the mayor-commissioner-city manager form of government in the State of Alabama.

2. Ordinance No. 89-1 which adopts the mayor-commissioner-city manager form of government and associated election provisions provided in Act No. 88-445, as amended by Act No. 88-331; Ordinance No. 89-2 which adopts the districting plan; Ordinance No. 89-107 which establishes a new districting plan (superseding the district lines established by Ordinance No. 89-2); and three annexations (Ordinance Nos. 89-88, 89-116, and 89-117) for the City of Dothan in Houston County, Alabama. We received the information to complete your submission of all matters except the annexations on April 12, 1989, and the information regarding the annexations on April 27, 1989.

- 2 -

We have considered carefully the extensive information you have provided, as well as information received from other interested parties. At the outset, we note that in 1974, the district court in Yelverton v. Driggers, 370 F. Supp. 612 (M.D. Ala.) found that the city's at-large method of election did not provide blacks an equal opportunity to participate in the electoral process. For reasons explained in its opinion, the court determined that the city should be permitted to continue to use the at-large system on a trial basis.

In the latter part of 1987 and into 1988, various black citizen groups urged that the city change the method of electing the associate commissioners from at large to single-member districts, and provided the city with a six-district plan which would allow blacks the opportunity to elect two of the seven commission members. Though there was some divergence of views in the black community about the appropriate method of election, there apparently was little or no support for a four-district approach while, among the districting options, the six-district approach was overwhelmingly favored.

According to the records provided by the city, the commissioners initially raised certain procedural concerns about implementing the six-district plan but did not oppose, on its merits, the proposal to change the number of commissioners. In fact, the mayor, in his original draft of the state legislation, included a proposal for three, four, and six district alternatives. Subsequently, certain white city officials met privately and resolved to have enacted the changes now submitted for Section 5 preclearance, including the four-district plan. When the commission endorsed these changes at its April 7, 1988, meeting, the mayor explained that there was "a strong feeling in the white community" that the six-district approach would allow blacks too much of an electoral opportunity (though blacks constitute at least 26 percent of the city's population, and the six-district proposal would give blacks the opportunity to elect 28 percent of the commission).

A city, of course, has no obligation to accept an electoral system because it is supported by minority groups or is perceived to be beneficial to such groups' interests. In order to satisfy Section 5 of the Voting Rights Act, however, a jurisdiction such as Dothan, must show that the change it has selected is not motivated by racial considerations. Aside from the Mayor's candid explanation, our review of the circumstances leading to the enactment of the proposed changes reveals no substantial, nonracial explanation for the selection of the four-district alternative districting proposal. In that regard, we note that Dothan has used the current four (residency) district system for a relatively short period of time and that, for about 70 years,

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the city had a government with six elected officials. Thus, any policy underlying the current commission size and the choice of a four-district plan would appear to be tenuous.

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. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the requirement in Act No. 88-445, as amended, that a Class 5 municipality (such as Dothan) that adopts the mayor-commissioner-city manager form of government be required to utilize a four single-member district method of election and to the districting plans which purport to implement that requirement.

The Attorney General is unable to make a determination concerning the implementation schedule specified in Act No. 88-445, as amended, since it is directly related to the objectionable four-district requirement and districting plans. See also 28 C.F.R. 51.35.

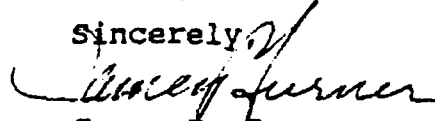
The Attorney General does not interpose any objections to the other specified changes occasioned by Act No. 88-445, as amended (including the change from at-large to single-member districts), the changes occasioned by Ordinance No. 89-1 (insofar as the ordinance adopts election provisions allowed by the state legislation which now have received Section 5 preclearance), or the three annexations. 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 such changes. See 28 C.F.R. 51.41.

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 the changes to which an objection now has been interposed has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the requirement that districting plans consist of four single-member districts and the proposed districting plans remain legally unenforceable. 28 C.F.R. 51.10.

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To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Dothan plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Lynda K. Oswald, Esq.



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 6, 1989

Mr. Fred G. Mott
City Administrator/Clerk
Drawer 400
Foley, Alabama 36536

Dear Mr. Mott:

This refers to the twelve annexations, the change in the method of election from at large to single-member districts, and the districting plan for the City of Foley in Baldwin County, Alabama, 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 the information to complete your submissions on September 5, 1989.

The Attorney General does not interpose any objections to the nine annexations set forth in Attachment A to this letter, which we understand are unpopulated and are not contemplated to include any future residential development. The Attorney General also does not interpose any objections to the change in method of election and the districting plan. 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 such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

After carefully considering the information provided by the city as well as information provided by other interested parties, we cannot reach a similar conclusion with respect to the residential annexations listed in Attachment B. At the outset, we note that these annexations do not effectuate a discriminatory dilution of black voting strength since the precleared method of election would appear to fairly reflect black voting strength in the city as it would be enlarged by the residential annexations.

- 2 -

City of Richmond v. United States, 422 U.S. 358 (1975). However, an annexation also affects voting "by including certain voters within the city and leaving others outside, [thereby] determin[ing] who may vote in the municipal election and who may not," Perkins v. Matthews, 400 U.S. 379, 388 (1971), and a covered jurisdiction is required to show that this decision has not been made in a discriminatory manner.

The submitted residential annexations were adopted in 1983, 1984, and 1986, and include white residential areas contiguous to the city limits. It appears that the city took an active role in obtaining these annexations, by encouraging property owners to petition for annexation and by obtaining local legislation to adopt one of the annexations, and also obtained at least one federal grant to improve one of the annexed areas.

In its initial response to our request for additional information regarding this matter the city informed us that, 1) at the same time these white areas were being welcomed into the city, a black residential area known as Mills Quarters likewise was requesting annexation, and 2) the city turned aside this request and, in doing so, used the same informal annexation criteria which were applied to the areas annexed and also to two white residential areas which unsuccessfully requested annexation in the 1980s. However, the information furnished later by the city, after a protracted effort to obtain a complete and accurate response to our request for additional information, reveals no nonracial explanation for the rejection of the Mills Quarters petition.

In that regard, the city apparently advised the Mills Quarters petitioners that annexation was not feasible because the area is not contiguous to the city, and this representation also was made to this Department for over a year. Yet, the city ultimately provided a map to us from the local tax assessor's office which clearly shows Mills Quarters to be contiguous to the city limits (i.e., contiguous to the area annexed in 1982 which previously was precleared). The city also has claimed that there was "considerable opposition" to annexation within the Mills Quarters area, but has been unable to provide us with any specific information in that regard. Lastly, the city has

- 3 -

argued that it would be unreasonably costly to annex this area, though the city already is providing fire and police services to the Mills Quarters residents. The city initially provided us with its estimate of the cost of installing water and sewer lines, but subsequently advised us that the cost of the water lines is not a substantial problem, and provided us with a county planning study which states that sewer lines appear not to be needed. We also understand that federal block grants are available to the city for such community development and that the Mills Quarters area would be a logical recipient. In sum, all of the nonracial reasons advanced by the city for failing to annex the Mills Quarters area have been contradicted by the city's own information.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52(a). In that regard, a jurisdiction does not have an affirmative duty to annex any particular area but, once it decides to undertake annexations, it must do so in a nondiscriminatory manner. In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the residential annexations set forth in Attachment B.

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 the objected-to changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the three referenced annexations legally unenforceable to the extent they affect voting. Dotson v. City of Indianola, 514 F. Supp. 397, 403 (N.D. Miss. 1981) (three-judge court) (municipal

- 4 -

residents of areas annexed after the Section 5 coverage date may not participate in municipal elections unless and until the annexations receive Section 5 preclearance); see also 28 C.F.R. 51.10.

Because the proposed method of election and districting plan are the result of a consent order in Dillard v. City of Foley, C.A. No. 87-T-1213-N (M.D. Ala.), we are providing a copy of this letter to the court and the attorneys in that case.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Foley plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner, an attorney in the Voting Section, at (202) 724-8388.

Sincerely,

A handwritten signature in dark ink, appearing to read "James P. Turner", is written over the typed name.

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Myron Thompson
United States District Judge

David R. Boyd, Esq.

James U. Blacksher, Esq.

Attachment A

Ordinance No. 220 (1975)

Ordinance No. 263 (1980)

Ordinance No. 278 (1981)

Ordinance No. 352-85

Ordinance No. 357-85

Ordinance No. 364-85

Ordinance No. 376-86

Ordinance No. 393-87

Ordinance No. 393A-87

Attachment B

Ordinance No. 324-83, as amended by Ordinance No. 331-84

Ordinance No. 344-84

Act Nos. 86-489 and 86-549



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 1, 1989

Mr. Albert W. LaPierre
Alabama Democratic Party
4120 - 3rd Avenue South
Birmingham, Alabama 35222

Dear Mr. LaPierre:

This refers to the amendment of the rules of the Alabama Democratic Party, which changes the method of selecting members of the State Democratic Executive Committee (SDEC); alters the method of selecting the Vice Chairman for Minority Affairs; and changes the method of selecting minority members of the Executive Board of the SDEC in the State of Alabama, 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 the information to complete your submission on October 2, 1989.

Organizational changes made by political parties require preclearance under Section 5 of the Voting Rights Act if a state has delegated public electoral functions to political parties and the changes relate to such delegated functions. Party political activities such as those related to campaigning, recruiting members and drafting platforms, are private associational activities not reached by Section 5. See generally Guidelines for the Administration of Section 5 of the Voting Rights Act. 28 C.F.R. 51.7. In Alabama, the state has delegated significant authority over the conduct of primary elections and the selection of candidates in state elections to the political parties. See e.g. Ala. Code § 17-16-1, et seq. The Democratic Party of Alabama, in turn, has vested the SDEC with authority to conduct these state authorized functions. Accordingly, the changes in the selection of officers and members of the SDEC in this submission may not be implemented without meeting the preclearance requirements of Section 5.

The relevant existing procedures were adopted in 1974 and 1983 as part of an affirmative action plan negotiated between party leaders and the Alabama Democratic Conference (ADC), an organization of black Democrats. The plan was designed to remedy a long history of exclusion of and discrimination against blacks

- 2 -

in all aspects of party affairs. At the time it was negotiated, the ADC was accepted by the Party as the exclusive representative of black Democrats. The plan was drawn explicitly to assure black participation at all levels of party affairs. Thus, the ADC was awarded three seats on the SDEC executive board, the president of ADC was to serve as Vice Chairman for Minority Affairs and, beginning in 1983, the ADC was to appoint 23 additional members of the SDEC. Following this latter development, the appointed black members were to elect three of their number to fill the three positions on the SDEC's Executive Board. These provisions received the requisite preclearance under Section 5.

The negotiated figure of 23 appointed members, when combined with elected blacks, produced a total black membership on the SDEC that approximately equalled the state's black population percentage of 25.6 percent. Thus, the Party's affirmative action goal was to appoint 23 extra members to assure that black membership on the SDEC would, at a minimum, reflect statewide black population. While we have some concern whether the record justifies the indefinite use of such race conscious selection of public officials (see J.A. Croson v. City of Richmond, 109 S.Ct. 706 (1989)), the affirmative action plan as originally conceived otherwise appears to be rational and not facially invalid.

Now, after several elections and a number of years experience under this system, the Party proposes certain changes to this plan. The Party recognizes a continuing need to enhance the number of blacks on the SDEC by appointment, but proposes to change from a flat requirement of 23 appointees to a formula number needed to produce population parity. And, instead of allowing the ADC to fill the appointed slots from among all black Democrats as in the past, it is proposed that the appointees be from among the unsuccessful black SDEC candidates in descending order according to the number of votes received. The Party also proposes to elect the Vice Chairman for Minority Affairs, rather than fill that position with the president of ADC, and to eliminate the three Executive Board members previously selected by the ADC. If needed to achieve population parity, additional positions on the Board would be elected by the entire SDEC.

Under Section 5, we are required to review changes such as this to determine whether the submitting authority has shown them to be free of racial purpose or retrogressive effect. In the context of a race conscious affirmative action plan we believe that the law likely requires, but at the least permits, periodic review and adjustment of racially preferential goals and/or quotas. Here, because it is projected that more blacks will be elected to the SDEC, the number of appointees necessary to achieve the minimum goal of population parity will be somewhat less than the previously agreed upon 23 seats. The adjustment

- 3 -

of this number to a formula amount, under these circumstances, seems consistent with the remedial purpose of the plan and is unobjectionable.

The other changes are more problematic. First, the additional black members will no longer be selected by a constituent black organization (ADC). Rather, they will qualify, automatically, in accordance with the number of votes received in unsuccessful campaigns for SDEC election. This change seems unrelated to improving the affirmative action plan and, in fact, could result in selection of persons in majority black districts who had failed to attract local black support. Second, we have received a number of allegations that withdrawing from the ADC the authority to select the Vice Chairman for Minority Affairs and three members of the Executive Board, is a calculated effort to decrease black influence and participation in Party affairs, not an effort to adjust its affirmative action plan to meet changed circumstances. The authority taken away from the ADC, a black constituent organization, is transferred to the entire SDEC, a body which foreseeably will, by Party rule, continue to be about 75 percent white. Nor has it been demonstrated that this change is related to giving greater recognition to the existence of other black political organizations which may now be competing with the ADC. In these circumstances, we are unable to certify that the Party has carried its burden under Section 5 with regard to the manner of selecting extra black members to the SDEC nor with respect to the change in method of choosing the Vice Chair for Minority Affairs and minority members of the Executive Board. On behalf of the Attorney General, I therefore interpose an objection to these features of the submitted plan.

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. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the Party rule changes concerning the method of selecting members to the State Democratic Executive Committee (SDEC) and the changes in the manner of selecting the Vice Chair for Minority Affairs and the minority members of the Executive Board continue to be legally unenforceable. 28 C.F.R. 51.10.

- 4 -

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Alabama Democratic Party plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202/724-6718), Deputy Chief of the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "James P. Turner".

James P. Turner
Acting Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

June 22, 1990

Ms. Debbie Barnes
Chairperson, Dallas County
Board of Registrars
P.O. Box 997
Selma, Alabama 36701

Dear Ms. Barnes:

This refers to the additional procedures for the 1990 implementation of the voter reidentification and purge program pursuant to Act No. 84-389, including the schedule and voter update program, for Dallas County, Alabama, 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 April 23, 1990.

At the outset we note that on September 12, 1984, we precleared, pursuant to Section 5, State of Alabama Act No. 84-389, which mandates annual purge and reidentification of voters in each county and the appointment of deputy registrars in each county precinct, and the procedures for implementing the provisions of Act No. 84-389 as outlined in the Alabama Secretary of State's August 7, 1984, letter. Under the precleared procedures for Act No. 84-389, the county board of registrars is to identify deceased electors and other electors who are believed to be no longer qualified to vote in the county, and, under certain conditions, to purge the active voter registration list of the names of these electors and to place the names of these electors on a list of inactive voters. The statute and the Secretary of State's letter set forth the timetable and the specific procedures that are to be followed in carrying out these actions.

It is our understanding that the precleared statute and implementation procedures do not address a countywide re-identification of voters or general re-registration program nor do they provide any procedures for completely re-constituting

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the county's voter registration list. Act No. 84-389 seems designed simply to remove from the existing registered voters list the names of those persons who are no longer qualified to vote because of death, conviction of certain crimes, or taking up residence in another county.

On September 18, 1989, we precleared a submission by the county of its implementation of Act No. 84-389. As you know, the county's implementation plan received the requisite Section 5 preclearance only after the county withdrew provisions of the program that involved procedures for using a voter update form which would have been mailed to all registered voters. The remaining portions of the county's program, which was precleared, merely tracked the precleared state law.

Based on the information available to us, it appears that the 1990 implementation of the voter reidentification and purge program pursuant to Act No. 84-389 deviates in several ways from the precleared procedures under Act No. 84-389, and, thus, from the county program precleared September 18, 1989. The proposed changes, implemented without benefit of Section 5 preclearance, include the use of voter update forms, which the county apparently had printed and distributed notwithstanding that the September 18, 1989, preclearance occurred only after the county withdrew its proposal for a voter update form that would be mailed to each registered voter. We note that while the distribution of these forms apparently did not include any mail-out procedure, the county implemented the voter update program without the requisite Section 5 preclearance, and relied on the information provided by the forms to disqualify electors from voting or re-qualify electors for voting in the June 5, 1990, primary election.

We understand that the voter update program has been implemented in such a way that many black voters believed they were not qualified to vote in the June 5, 1990, primary election if they had not returned a voter update form. Further, it appears that this misapprehension was exacerbated during the election because the voter registration list prepared by the board of registrars used the same designation for voters who did not return a voter update form or whose form was not yet processed by the county, as the designation for voters who are required to reidentify under Act No. 84-389. Thus, the voter update program has resulted in a voter registration list that actually includes many voters who have been and continue to

- 3 -

be qualified to vote, but may not have been permitted to vote on June 5 and may be purged and thus disqualified from voting in subsequent elections simply because they failed to pick up or return a voter update form, when there was no valid requirement that they do so.

The proposed schedule apparently did not permit time for completing the voter update program prior to the election, but the county proceeded to implement the incomplete, and in some cases erroneous, results for the June 5, 1990, primary election. The outcome was that many voters who had returned the voter update form were required to reidentify a second time, at the polls or elsewhere, prior to being permitted to cast a ballot. The proposed schedule also apparently did not permit sufficient time for adequate training of poll officials, with the result that the re-registration and reidentification procedures were applied inconsistently. Some voters were made to travel to the probate judge's office to reidentify, while other voters were required to complete reidentification forms prior to voting, and still other voters were permitted to cast regular ballots prior to completing reidentification forms. It appears that there was little if any reasonable evidence to believe that most of the voters who were designated by a "P" listing and who were made to reidentify or re-register in fact were not qualified to vote in the June 5, 1990, primary election.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In satisfying its burden, the submitting authority must demonstrate that the proposed change is not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In light of these principles, and under the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed 1990 implementation of Act No. 84-389 and the proposed voter update program. We note that this objection does not otherwise affect any precleared procedures for conducting the June 26, 1990, election.

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

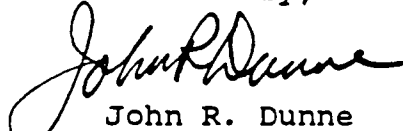
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effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the additional procedures for the 1990 implementation of Act No. 84-389 and the voter update program continue to be legally unenforceable, and, therefore, may not be enforced in any manner in the June 26, 1990, run-off election or subsequently. See also 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Dallas County plans to take with respect to these matters. In order to avoid further voter confusion, we stand ready to work with local and appropriate state officials. In that regard, we will be contacting you soon to discuss these matters.

If you have any questions, feel free to call Ms. Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Dunne".

John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

June 22, 1990

Ms. Debbie Barnes
Chairperson, Dallas County
Board of Registrars
P.O. Box 997
Selma, Alabama 36701

Dear Ms. Barnes:

This refers to the additional procedures for the 1990 implementation of the voter reidentification and purge program pursuant to Act No. 84-389, including the schedule and voter update program, for Dallas County, Alabama, 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 April 23, 1990.

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On September 18, 1989, we precleared a submission by the county of its implementation of Act No. 84-389. As you know, the county's implementation plan received the requisite Section 5 preclearance only after the county withdrew provisions of the program that involved procedures for using a voter update form which would have been mailed to all registered voters. The remaining portions of the county's program, which was precleared, merely tracked the precleared state law.

Based on the information available to us, it appears that the 1990 implementation of the voter reidentification and purge program pursuant to Act No. 84-389 deviates in several ways from the precleared procedures under Act No. 84-389, and, thus, from the county program precleared September 18, 1989. The proposed changes, implemented without benefit of Section 5 preclearance, include the use of voter update forms, which the county apparently had printed and distributed notwithstanding that the September 18, 1989, preclearance occurred only after the county withdrew its proposal for a voter update form that would be mailed to each registered voter. We note that while the distribution of these forms apparently did not include any mail-out procedure, the county implemented the voter update program without the requisite Section 5 preclearance, and relied on the information provided by the forms to disqualify electors from voting or re-qualify electors for voting in the June 5, 1990, primary election.

We understand that the voter update program has been implemented in such a way that many black voters believed they were not qualified to vote in the June 5, 1990, primary election if they had not returned a voter update form. Further, it appears that this misapprehension was exacerbated during the election because the voter registration list prepared by the board of registrars used the same designation for voters who did not return a voter update form or whose form was not yet processed by the county, as the designation for voters who are required to reidentify under Act No. 84-389. Thus, the voter update program has resulted in a voter registration list that actually includes many voters who have been and continue to

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The proposed schedule apparently did not permit time for completing the voter update program prior to the election, but the county proceeded to implement the incomplete, and in some cases erroneous, results for the June 5, 1990, primary election. The outcome was that many voters who had returned the voter update form were required to reidentify a second time, at the polls or elsewhere, prior to being permitted to cast a ballot. The proposed schedule also apparently did not permit sufficient time for adequate training of poll officials, with the result that the re-registration and reidentification procedures were applied inconsistently. Some voters were made to travel to the probate judge's office to reidentify, while other voters were required to complete reidentification forms prior to voting, and still other voters were permitted to cast regular ballots prior to completing reidentification forms. It appears that there was little if any reasonable evidence to believe that most of the voters who were designated by a "P" listing and who were made to reidentify or re-register in fact were not qualified to vote in the June 5, 1990, primary election.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In satisfying its burden, the submitting authority must demonstrate that the proposed change is not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In light of these principles, and under the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed 1990 implementation of Act No. 84-389 and the proposed voter update program. We note that this objection does not otherwise affect any precleared procedures for conducting the June 26, 1990, election.

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

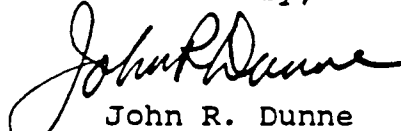
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effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the additional procedures for the 1990 implementation of Act No. 84-389 and the voter update program continue to be legally unenforceable, and, therefore, may not be enforced in any manner in the June 26, 1990, run-off election or subsequently. See also 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Dallas County plans to take with respect to these matters. In order to avoid further voter confusion, we stand ready to work with local and appropriate state officials. In that regard, we will be contacting you soon to discuss these matters.

If you have any questions, feel free to call Ms. Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Dunne".

John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

December 3, 1990

Dorman Walker, Esq.
Balch & Bingham
P.O. Box 78
Montgomery, Alabama 36101

Dear Mr. Walker:

This refers to the 1981 elimination of District 10, the resulting decrease in number of members from 15 to 14 and in the number of single-member election districts from 8 to 7, and a redistricting plan; the 1986 change in District 7 from a two-member to a single-member district and change in District 1 from a three-member to a four-member district; the 1988 redistricting plan; and the September 13, 1989, Bylaws, which provide for an increase in the number of members from 14 to 30; a change from an elective to an elective-appointive system with the principle of fair representation and the rule for equal division by gender by district and the procedures therefor to select certain members, including racial quotas by district, a loser eligibility requirement, and the change from certifying as elected the highest votegetter for each CDEC position to permitting losing candidates to be certified as elected; procedures for implementing the fair representation and equal gender division rules when there are an insufficient number of losing candidates; method of election changes to 5 six-member districts, from majority to plurality vote, and elimination of numbered posts in multimember districts; a redistricting plan; procedures for redistricting and implementation thereof; candidate qualifications; procedures for filling vacancies; and the change in authority for conducting party primary elections from committeewide to a special five-member Election Committee, for the County Democratic Executive Committee (CDEC) of the Democratic Party in Perry County, Alabama, 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 supplemental information on October 4, 1990.

At the outset, we note that the CDEC adopted and implemented the instant voting changes, but failed to comply with the preclearance requirements of Section 5 regarding these changes until sued by minority citizens in Hawthorne v. Baker, No. CA 89-T-381-S (M.D. Ala.). We also note that the CDEC has been unable

- 2 -

to provide certain items of information regarding the proposed changes, in part because of the hiatus between adoption and implementation of the changes and the Section 5 submission of those changes.

With regard to the voting changes effected by the 1989 Bylaws, we have carefully considered the information you have provided, as well as information from the Census, previous Section 5 submissions involving the county, and other interested parties. Our investigation has revealed that elections where black candidates and white candidates oppose each other in the county and in Democratic Party primary elections are characterized by a pattern of racially polarized voting, a fact that is relevant in the Section 5 analysis, particularly given that black persons constitute a significant majority of registered voters in Perry County and, based on the information provided, a majority of Democratic voters.

We begin our analysis with the changes in the method of election for the CDEC. Based on the information available to us, it appears that the increase in the number of members and the adoption of the county commission districting plan as a redistricting plan for multimember districts and the concomitant 1989 changes in the CDEC election method (e.g., the change to a plurality vote requirement and the elimination of numbered places) afford black voters in the Democratic electorate of Perry County an opportunity equal to that of white voters to elect candidates of their choice to the CDEC. Indeed, the 1990 implementation of the 1989 election method changes seems to bear out such a conclusion, given that twenty of the thirty candidates who won the election outright are black persons who appear to be the choice of black voters. Thus, the Attorney General interposes no objection to these changes and all the changes effected by the 1989 Bylaws other than those provisions concerning the fair representation principle and the rule for equal division by gender. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We are unable to reach a similar conclusion, however, with regard to the change from a purely elective system to an elective-appointive system, including the provisions for selecting certain members as adopted under the "principle of fair representation" and the rule for equal division by gender, both applied to each individual multimember district. These provisions are apparently intended to insure that the Perry County Democratic Executive Committee will consist of a broad cross section of the community. Yet, the districting scheme adopted in 1989 for the multimember districts seems to have accomplished such a result without resort to the race conscious and gender conscious requirements prescribed by the Bylaws.

Thus, for example, in the June 5, 1990, primary election for the CDEC, voters from across the county participated in a primary election, and twenty black and ten white candidates were elected. However, to conform the CDEC to the Bylaws requirements for racial representation, these election results were then adjusted. Consequently, subsequent to the June 5th CDEC election, three black persons who won the election outright were not certified as CDEC members, and, instead, the committee substituted and certified white persons with fewer votes as the winners over black candidates.

As a result of this "ceiling" being imposed on the number of blacks who can serve on the CDEC from each of the districts, the black representation on that body has been limited. In addition, the current proposal for implementing the equal division by gender rule could require in future elections that a black candidate who actually wins the election be replaced by a white candidate of the opposite gender. Thus, an adjustment in the composition of the CDEC in accordance with the gender preferences required by the By-laws has the same potential for discrimination that the racial preferences have already had in Perry County.

In some circumstances, race and gender conscious affirmative action plans may be necessary to remedy the effects of identified past discrimination. Racial and gender classifications such as those prescribed by the By-laws should be reserved for remedial settings since, outside such settings, "they may in fact promote notions of racial inferiority and lead to a politics of racial hostility." City of Richmond v. Croson, 109 S.Ct. 706 (1989). The record before us, however, does not disclose the requisite specificity of the injury that the "principle of fair representation" is supposed to correct. Indeed, the CDEC proposes a plan that seems to be designed and has been implemented to suppress the will of the Democratic voters in a predominantly black electorate and to minimize black participation on the CDEC.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In

satisfying its burden, the submitting authority must demonstrate that the proposed change is not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); see also City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In light of these principles, and under the circumstances discussed above, I cannot conclude, as I must

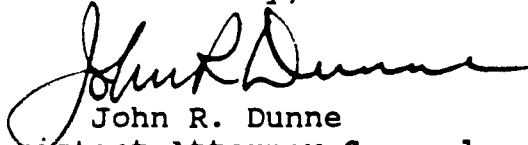
under the Voting Rights Act, that the Perry County Democratic Party has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the provisions of the 1989 Bylaws concerning the fair representation principle and the rule for equal division by gender (Article II, Section 2, fourth through seventh sentences).

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 or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1989 Bylaws continue to be legally unenforceable only insofar as they incorporate the principle of fair representation and the rule for equal division by gender. Accordingly, the 1990 implementation of those provisions under which three white CDEC members were certified as elected as substitutes for properly elected black members also continues to be legally unenforceable. See also 28 C.F.R. 51.10.

With regard to the 1981 and 1986 changes and the 1988 redistricting plan, the information you have provided indicates that these changes have been superseded in their entirety by the election method and redistricting plan in the 1989 Bylaws. Accordingly, no further determination by the Attorney General is required or appropriate under Section 5 concerning the 1981 and 1986 changes and the 1988 redistricting plan. See 28 C.F.R. 51.35.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Perry County Democratic Party plans to take with respect to these matters. In particular, please advise us of the steps the party plans to take with regard to the unenforceable implementation of the objected-to provisions in the 1989 Bylaws. If you have any questions, feel free to call Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "John R. Dunne", is written over a horizontal line.

John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 31 1990

David R. Boyd, Esq.
Balch & Bingham
P. O. Box 78
Montgomery, Alabama 36101

Dear Mr. Boyd:

This refers to the annexation (adopted by an October 23, 1990, referendum) to the City of Valley in Chambers County, Alabama, 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 initial submission on November 1, 1990, supplemental information was received on November 21, 1990.

We have considered carefully the materials furnished by you, as well as comments and information from other interested parties. According to information you have provided, the population of the area proposed for annexation consists of 243 persons, only two of whom are black. Thus, the addition of this area to the city will necessarily have the effect of diluting minority voting strength in the existing city. However, because the city was incorporated after the 1980 Census was conducted, our ability to determine the degree of this dilution has been hampered substantially by the absence of detailed census data for the city. Estimates we have received vary significantly, but there appears to be no information currently available which would support a conclusion that the actual dilution of minority voting strength effected by the submitted annexation is insignificant.

In your submission you represent that the impact of this annexation on minority voting strength in the City of Valley is not a matter of concern because of the city's obligation, stemming from a consent decree in Dillard v. Crenshaw County (City of Valley), No. 85-T-1332-N (M.D. Ala. Dec. 12, 1988), to convert, following the availability of 1990 Census data, from the existing at-large system to a single-member districting plan incorporating, if possible, at least one district with a black voting majority.

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Furthermore, we note that while city representatives have expressed confidence that Valley will be able to satisfy the Dillard consent decree with a plan that includes at least one black voting majority district, the absence of current census information leaves this assertion unsupported. Of course, we recognize that the city must await the release of the 1990 Census before it undertakes the development of a districting plan but, in those circumstances, the only system under which we can analyze the submitted annexation is that of at-large elections which we understand continues in existence until replaced by a single-member district plan. In that context, a racially dilutive annexation, such as appears to be involved here, can be precleared only if the election system is modified in such a way as to afford the affected minority group representation "reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, 422 U.S. 358, 370 (1975). Here, the city not only has failed to show that black voting strength would be fairly recognized in the enlarged city under the existing at-large system, but the city has failed also to demonstrate that blacks would be represented fairly under a single-member districting plan.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the annexation adopted by the October 23, 1990, referendum.

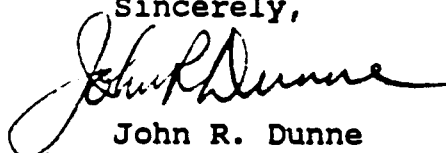
Of course, under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed annexation has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. See 28 C.F.R. 51.44.

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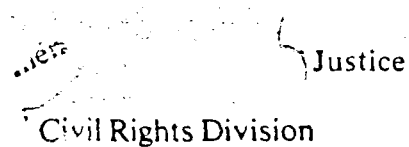
In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. In this regard, we again note City of Richmond where the Supreme Court observed that a dilution such as that involved here may nevertheless pass Section 5 muster "as long as the post-annexation electoral system fairly recognizes the minority's political potential." City of Richmond v. United States, *supra*, 422 U.S. at 478. We agree that compliance with the requirements of the Dillard consent decree presents the city with the opportunity to achieve the goal identified in Richmond. Therefore, we would be willing to reconsider this objection at the time Section 5 preclearance is sought for the single-member districting plan to be developed by the city after the 1990 Census is released. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed annexation continues to be legally unenforceable insofar as it affects voting. See 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 City of Valley plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), Attorney in the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "John R. Dunne", is written over the typed name.

John R. Dunne
Assistant Attorney General
Civil Rights Division



Office of the Assistant Attorney General

Washington, D.C. 20530

January 25, 1991

Dorman Walker, Esq.
Balch & Bingham
P.O. Box 78
Montgomery, Alabama 36101

Dear Mr. Walker:

This refers to the increase in number of members from 23 to 49; change in the method of election from single-member districts to a mix of single-member districts and multimember districts with designated posts; a March 8, 1990, organizational plan, which provides, inter alia, for a decrease in the number of popularly elected members from 49 to 40, a change in the method of election from electing members from mixed single- and multi-member districts to four 10-member districts with plurality vote, a rule for equal division by gender by district, a districting plan, a change from an elective to an elective-appointive system with the principle of fair representation, and the procedures for the appointment of additional members, for the County Democratic Executive Committee (CDEC) of the Democratic Party in Lamar County, Alabama, 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 the information to complete your submission on November 26, 1990.

We have considered carefully the information you have provided, as well as information from the Census, previous Section 5 submissions involving the county, and other interested parties. At the outset, we note that this submission contains a number of voting changes, adopted by the CDEC over the years, for which the CDEC has been unable to provide certain items of information due, in part, to the lapse of time between adoption and implementation of the changes and their submission for Section 5 review. However, in conducting our Section 5 analysis, we must view these changes as best we can in the context of the system that was in effect on November 1, 1964.

cc: Public File

- 2 -

Because the 23-single-member district plan for electing CDEC members which was in effect in 1964 appears now to be severely malapportioned, it is appropriate to compare the proposed methods of election and districting plans to a fairly drawn and properly apportioned single-member districting plan. Wilkes County v. United States, 450 F. Supp. 1171 (D.D.C. 1978). Our information reveals that minorities in the county are concentrated in such a way that a fairly drawn 23-single-member district plan would result in some districts which would have black majorities. By contrast, the highest black percentage of registered voters in any of the proposed districts in the CDEC's most recent proposal is 15 percent. It is thus apparent that any chances of electing a candidate of their choice by black voters in any of those multimember districts rest upon the fortuitous circumstances of single-shot voting and, accordingly, that the proposed change in the method of election is likely to have a retrogressive effect. In the context of the racially polarized voting patterns that seem to exist in Lamar County, it appears that the adoption of the county commission districts to serve as multimember districts for the CDEC will not afford black voters in the Lamar County Democratic electorate an opportunity equal to that of white voters to elect candidates of their choice to the CDEC.

We turn then to the change from a purely elective system to an elective-appointive system, including the provisions for appointing members under the "principle of fair representation." In some circumstances, race conscious affirmative action plans may be necessary to remedy the effects of identified past discrimination. Racial classification such as those prescribed by the 1990 organizational plan should be reserved for remedial settings since, outside such settings, "they may in fact promote notions of racial inferiority and lead to a politics of racial hostility." City of Richmond v. Croson, 109 S.Ct. 706 (1989). The record before us, however, does not disclose the requisite specificity of the injury that the "principle of fair representation" is supposed to correct.

Moreover, the principle of fair representation in Lamar County limits the level of black representation on the CDEC to 12 percent, which corresponds to the black percentage of the population. Although the CDEC has not yet implemented this provision, it appears that, if implemented in accord with the CDEC's interpretation, it would in fact reduce minority participation in the CDEC. Thus, while blacks have been able to achieve a greater than 12 percent level of CDEC representation in recent years and already have elected more than that percentage of the elected members of the proposed plan, the so-called principle of fair

- 3 -

representation would require the CDEC to diminish the level of black representation by adding whites to match the racial makeup of the county.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In satisfying its burden, the submitting authority must demonstrate that the proposed change is not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); see also City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In light of these principles, and under the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden in this instance and I find no basis for preclearing any of the changes before us. Therefore, on behalf of the Attorney General, I must object to the changes in the method of selecting the Lamar County Democratic Executive Committee.

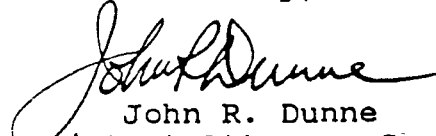
Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, all of the submitted changes continue to be legally unenforceable. See also 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Lamar County Democratic Party plans to take with respect to these matters. In particular, please advise us of the steps the party plans to take with regard to the unenforceable implementation of the objected-to provisions in the 1990 organizational plan. If you have any questions, please call Richard Jerome (202-514-8696), an attorney in the Voting Section.

- 4 -

Because the instant voting changes are at issue in Hawthorne v. Baker, CV-89-T-381-S (M.D. Ala.), we are providing a copy of this letter to the court in that case.

Sincerely,

A handwritten signature in dark ink, appearing to read "John R. Dunne". The signature is fluid and cursive, with the first name "John" being more prominent.

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Myron H. Thompson
United States District Judge



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 28 1991

Dorman Walker, Esq.
Balch & Bingham
P.O. Box 78
Montgomery, Alabama 36101

Dear Mr. Walker:

This refers to the increase in number of members from 25 to 32; the 1970 increase in number of members from 32 to 45, a change in method of election from single-member districts to 43 single-member districts and 1 two-member district, a redistricting plan, and adoption of numbered posts in the multi-member district; the 1982, 1983, and 1985 redistrictings; the 1985 increase in number of members from 45 to 48, the change in method of election to 9 single-member districts, 11 two-member districts, 3 three-member districts, and 2 four-member districts; and the September 7, 1989, Rules, as amended on March 1, 1990, which provide for a decrease in number of members from 48 to 40, a change in method of election to 4 ten-member districts by plurality vote, a redistricting, and a change from an elective to an elective-appointive system with the principle of fair representation and the procedures therefor to appoint additional members, for the County Democratic Executive Committee (CDEC) of the Democratic Party in Limestone County, Alabama, 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 the information to complete your submission on November 29, 1990.

We have considered carefully the information you have provided, as well as information from the Census, previous Section 5 submissions involving the county, and other interested parties. At the outset, we note that this submission contains a number of voting changes, adopted by the CDEC over the years, for which the CDEC has been unable to provide certain items of information due, in part, to the lapse of time between adoption and implementation of the changes and their submission for Section 5 review. However, in conducting our Section 5 analysis, we must view these changes as best we can in the context of the system that was in effect on November 1, 1964.

Because the 25-single-member district plan for electing CDEC members which was in effect in 1964 appears now to be severely malapportioned, it is appropriate to compare the proposed methods of election and districting plans to a fairly drawn and properly apportioned single-member districting plan. Wilkes County v. United States, 450 F. Supp. 1171 (D.D.C. 1978). Our information reveals that minorities in the county are concentrated in such a way that a fairly drawn plan of 25 single-member districts would result in some districts that would have black majorities or that a combination of the existing single-member districts now used to elect county school board members and Athens city councilmembers as CDEC districts would result in a plan including some black-majority multimember CDEC districts. By contrast, the highest black percentage of registered voters in any of the proposed multimember districts in the CDEC's most recent proposal is 18 percent. It is thus apparent that any chances for black voters to elect candidates of their choice in any of the proposed multimember districts rest upon the fortuitous circumstance of single-shot voting and, accordingly, that the proposed change in the method of election is likely to have a retrogressive effect. In the context of the racially polarized voting patterns that seem to exist in Limestone County, it appears that the adoption of the county commission districts to serve as multimember districts for the CDEC will not afford black voters in the Limestone County Democratic electorate an opportunity equal to that of white voters to elect candidates of their choice to the CDEC.

We turn then to the change from a purely elective system to an elective-appointive system, including the provisions for appointing members under the "principle of fair representation." In some circumstances, race conscious affirmative action plans may be necessary to remedy the effects of identified past discrimination. Racial classification such as those prescribed by the 1989 Rules, as amended in 1990, should be reserved for remedial settings since, outside such settings, "they may in fact promote notions of racial inferiority and lead to a politics of racial hostility." City of Richmond v. Croson, 109 S.Ct. 706 (1989). The record before us, however, does not disclose the requisite specificity of the injury that the "principle of fair representation" is supposed to correct.

Moreover, the principle of fair representation in Limestone County limits the level of black representation on the CDEC to 14 percent, which corresponds to the black percentage of the population. Although the CDEC has not yet implemented this provision, it appears that, if implemented in accord with the CDEC's interpretation, it could in fact reduce minority participation in the CDEC. Thus, if black Democratic voters are able to achieve a greater than 14 percent level of CDEC representation, the so-called principle of fair representation would require the CDEC to diminish the level of black

representation by adding whites to match the racial makeup of the county.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In satisfying its burden, the submitting authority must demonstrate that the proposed change is not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); see also City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), *aff'd*, 459 U.S. 1166 (1983). In light of these principles, and under the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden in this instance and I find no basis for preclearing any of the changes before us. Therefore, on behalf of the Attorney General, I must object to the proposed changes in the method of selecting the Limestone County Democratic Executive Committee.

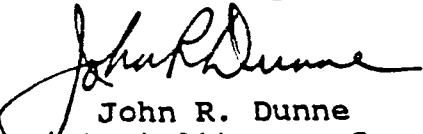
Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, all of the submitted changes continue to be legally unenforceable. See also 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Limestone County Democratic Party plans to take with respect to these matters. In particular, please advise us of the steps the party plans to take with regard to the unenforceable implementation of the objected-to provisions in the 1989 Rules, as amended in 1990. If you have any questions, please call Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

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Because the instant voting changes are at issue in Hawthorne v. Baker, CV-89-T-381-S (M.D. Ala.), we are providing a copy of this letter to the court in that case.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Myron H. Thompson
United States District Judge



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

David R. Boyd, Esq.
Balch & Bingham
P. O. Box 78
Montgomery, Alabama 36101

NOV 08 1991

Dear Mr. Boyd:

This refers to Act No. 90-294, which creates the 40th Judicial Circuit and redistricts the existing 18th Judicial Circuit, reassigns the circuit judges of the 18th Circuit to either the 18th or the 40th Circuits, provides for a district attorney in the new 40th Circuit, and provides the implementation schedule for those changes; Act No. 90-474, which creates a second circuit judgeship in the 39th Judicial Circuit and the implementation schedule for that change; and Act No. 90-539, which creates a fourth circuit judgeship in the 20th Judicial Circuit and the implementation schedule for that change for the State of Alabama, 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 response to our request for additional information on September 9, 1991.

With regard to the changes occasioned by Act Nos. 90-294 and 90-474, the Attorney General does not interpose any objection. However, we note that the failure of the Attorney General to object does not bar subsequent judicial action to enjoin enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the changes occasioned by Act No. 90-539, we are unable to reach a similar conclusion. As a matter of background, we note that on April 27, 1987, the State of Alabama obtained preclearance under Section 5 for more than fifty voting changes affecting the expansion of the state's judicial system since November 1, 1964, including certain changes affecting the 20th Judicial Circuit that is comprised of Henry and Houston

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Counties. The state also obtained preclearance of additional changes affecting the expansion of the state's judicial system on January 15, 1988, and September 11, 1989. Thus, while we are mindful of these earlier preclearances of other changes similar to the one now before us relating to the 20th Circuit, we undertake our present analysis in the light of additional information that has come to our attention since the time of our earlier analyses.

As you are aware, private plaintiffs have alleged that the system for electing judges in some judicial circuits and districts in Alabama, including the 20th Circuit, violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and that the state has continued to maintain the at-large, numbered post electoral system with the knowledge that this election method minimizes minority electoral opportunities. SCLC v. Evans, Civ. Action No. 88-D-462-N (M.D. Ala.). In the upcoming trial of that case, the United States, which is participating as amicus curiae, will present expert testimony to show that the state has maintained the at-large, numbered post system, at least in part, for racially discriminatory reasons.

Our analysis of the at-large, numbered post electoral system and the context in which it has operated in the 20th Circuit is further informed by a number of factors. For example, we note that in the 20th Circuit, which has a 25 percent black population, no black persons have served as circuit court or district court judges. In addition, an expert retained by the plaintiffs in SCLC has found that voting in the 20th Circuit has been characterized by extreme racial bloc voting. Notwithstanding the evidence of racially polarized voting, black voters in Henry and Houston Counties have been able to elect candidates of their choice to county governing bodies when, as the result of litigation, alternatives to the at-large electoral system were implemented. See, e.g., Diggs v. Henry County, C.A. No. 85-V-1331-S (M.D. Ala. Nov. 12, 1985); United States v. Houston County Commission, C.A. No. 85-H-946-S (S.D. Ala. 1985); Dillard v. Crenshaw County et al., C.A. No. 87-T-1234-N (M.D. Ala.). Thus, there would appear to be alternatives for electing the four circuit judges in this circuit that would afford black voters with an equal opportunity to participate in the electoral process and to elect judicial candidates of their choice, although single-member districts may not necessarily be the only remedial alternative available to the State.

- 3 -

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In satisfying its burden, the submitting authority must demonstrate that the choices underlying the proposed change are not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). While we do not in any way question the State's need for creating a new judgeship position for the 20th Circuit, we do find ourselves unable to conclude that the State has carried its burden of showing the absence of the proscribed purpose in creating that position through expansion of an existing system for electing candidates to the circuit court which our analysis shows to be violative of Section 2 of the Voting Rights Act. See e.g., 28 C.F.R. 51.55(b). Therefore, on behalf of the Attorney General, I must interpose an objection to the electoral changes occasioned by Act No. 90-539.

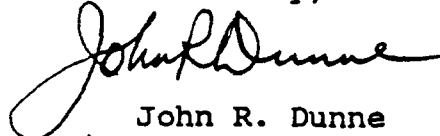
Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgement from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed changes continue to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

Because the submitted changes occasioned by Act No. 90-539 are at issue in SCLC v. Evans, supra, we are providing a copy of this letter to the court in that case.

- 4 -

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Alabama plans to take concerning this matter. If you have any questions, you should call Mark Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Dunne".

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Truman Hobbs
United States District Judge



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 23, 1991

David R. Boyd, Esq.
Balch & Bingham
P. O. Box 78
Montgomery, Alabama 36101

Dear Mr. Boyd:

This refers to Act No. 91-558, which creates a second district court judgeship in Marshall County, and the implementation schedule for that change; and Act No. 91-640, which creates a 25th circuit judgeship in the Tenth Circuit for the Bessemer Division, an eighth circuit judgeship in the 15th Circuit, and a third circuit judgeship in the 19th Circuit, and the implementation schedule for those changes for the State of Alabama, 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 initial submission on October 24, 1991; supplemental information was received on November 4 and 5, 1991.

With regard to the changes occasioned by Act No. 91-558 and 91-640, to the extent that the latter statute provides for the creation of a third circuit court judgeship in the 19th Circuit, the Attorney General does not interpose any objection. However, we note that the failure of the Attorney General to object does not bar subsequent judicial action to enjoin enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We are unable to reach a similar conclusion with regard to the changes occasioned by Act No. 91-640 pertaining to the creation of an additional circuit judgeship in the 10th Circuit and in the 15th Circuit. As you are aware, private plaintiffs in pending litigation have alleged that the system for electing

- 2 -

judges in some judicial circuits and districts in Alabama, including the 10th and the 15th Circuits, violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and that the state has continued to maintain the at-large, numbered post electoral system with the knowledge that this election method minimizes minority electoral opportunities. SCLC v. Evans, Civ. Action No. 88-D-462-N (M.D. Ala.). The trial in that case, in which the United States is participating as amicus curiae, was conducted on December 2-11, 1991, and the court has requested that post-trial briefs be filed by January 15, 1992.

Our analysis of the at-large, numbered post electoral system and the context in which it has operated in the 10th and 15th Circuits is based upon a number of factors, including evidence at trial. For example, expert testimony was presented to show that the state has maintained the at-large, numbered post system, at least in part, for racially discriminatory reasons. Expert testimony also was presented concerning the presence of racially polarized voting in both the 10th and 15th Circuits. We note that in the 10th Circuit (Jefferson County), which has a 35 percent black population based upon the 1990 Census, only three of the twenty four circuit judges are black, the third having been only recently appointed by the governor. None of the eleven district court judges are black. Similarly, in the 15th Circuit (Montgomery County), which has a 41.6 percent black population, only one of the seven circuit judges is black and none of the three district court judges is black.

Notwithstanding the evidence of racially polarized voting, black voters in both Jefferson and Montgomery Counties have been able to elect candidates of their choice to local governing bodies when alternatives to the at-large electoral system have been implemented. See, e.g., Taylor v. Jefferson County, CA-84-C-1730-S (N.D. Ala. Oct. 31, 1985) (consent decree requiring 5 single-member districts); Hendrix v. McKinney, 460 F. Supp. 626 (M.D. Ala. 1978). Furthermore, evidence presented at the trial demonstrates that the black population in both the 10th and 15th Circuits is sufficiently large and geographically compact to permit the creation of single-member districts, subdistricts or smaller multimember districts, some of which would have effective black voting age majorities. Thus, there appear to be readily discernible alternative methods of electing the twenty four circuit judges in the 10th Circuit and the seven circuit judges in the 15th Circuit that would afford black voters with an equal opportunity to participate in the electoral process and to elect judicial candidates of their choice.

- 3 -

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In satisfying its burden, the submitting authority must demonstrate that the choices underlying the proposed change are not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). While we do not in any way question the state's need for creating the new judgeship positions for the 10th and 15th Circuits, we do find ourselves unable to conclude that the state has carried its burden of showing the absence of the proscribed purpose in creating those positions through expansion of an existing system for electing candidates to the circuit court which our analysis shows to be violative of Section 2 of the Voting Rights Act. See e.g., 28 C.F.R. 51.55(b). Therefore, on behalf of the Attorney General, I must interpose an objection to the electoral changes occasioned by Act No. 91-640 insofar as they pertain to the 10th and the 15th Circuits.

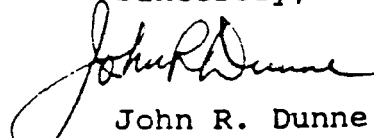
Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgement from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed changes continue to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

Because some of the submitted changes occasioned by Act No. 91-640 pertain to judicial circuits at issue in SCLC v. Evans, supra, we are providing a copy of this letter to the court in that case.

- 4 -

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Alabama plans to take concerning this matter. If you have any questions, you should call Sandra S. Coleman (202-307-3718), a Deputy Section Chief in the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "John R. Dunne", is written over the typed name.

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Truman Hobbs
United States District Judge



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 27, 1992

Honorable Jimmy Evans
Attorney General
Alabama State House
11 South Union Street
Montgomery, Alabama 36130

Dear Mr. Attorney General:

This refers to Act No. 92-63 (1992), which provides the redistricting plan for Congressional districts and Act No. 92-152 (1992), which provides for a change in the qualifying deadline for the June 2, 1992, primary election for members of Congress for the State of Alabama, 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 the Congressional redistricting submission on March 11, 1992; supplemental information was received on March 12, 17, 18, 23, 24, 25, and 26, 1992. The submission of the change in qualifying deadline was received on March 26, 1992.

With respect to the change in qualifying deadline, the Attorney General does not interpose any objection to the change. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5, 28 C.F.R. 51.41 and 51.43.

With respect to the far more complex Congressional redistricting, we note at the outset the extreme time constraints imposed by the order of the Court in Wesch v. Hunt, No. 91-0787 (S.D. Ala. March 9, 1992), which allowed the state until noon today to obtain preclearance of its proposed plan under Section 5. For that reason, our review to date necessarily has been limited, and similarly, the short time available has limited the state's ability to meet its burden under Section 5. To the extent possible, however, we have given careful consideration to the materials and information you have so diligently made available to us.

As you are aware, a concern has been raised that an underlying principle of the Congressional redistricting was a predisposition on the part of the state political leadership to limit black voting potential to a single district. The proposed

- 2 -

plan provides for one such district based on black population concentrations in Jefferson County, Montgomery County and intervening areas. The remainder of the state's concentrated black population, however, is fragmented under the submitted plan among a number of districts none of which has a black population of as much as 30 percent. In light of the prevailing pattern of racially polarized voting throughout the state, it does not appear that black voters are likely to have a realistic opportunity to elect a candidate of their choice in any of the districts.

Our analysis further indicates that the fragmentation of black population concentrations outside of the one district with a black voting age population majority was unnecessary. Indeed, it is clear that at least the outlines of alternative plans that avoided such fragmentation were available or readily discernable by state officials and that such alternatives would provide for two Congressional districts with black voting age population majorities. These included plans with one district based on the black communities of Montgomery and Mobile Counties and the intervening and adjacent black-populated areas, and the other based upon the black population of Jefferson County and southern Tuscaloosa County, together with black-populated areas to the south and west. Moreover, it appears that the elimination of this identified fragmentation would enhance the ability of black voters to elect representatives of their choice.

The fragmentation of black population in areas of the state outside of the proposed black majority district, under these circumstances, has not been adequately explained. The reasons for this fragmentation appear to be related to the desire to protect incumbent members or to serve parochial political interests. While such considerations in themselves are not inappropriate, they may not be accomplished at the expense of the rights of black voters. Garza v. City of Los Angeles, 918 F.2d 763 (9th Cir. 1990); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).

Under Section 5, as noted above, the state has the burden of demonstrating that a proposed change was not adopted with a racially discriminatory purpose and that it will not have a racially discriminatory effect. In addition, a redistricting plan may not be precleared if the plan clearly violates Section 2 of the Act, 42 U.S.C. 1973. See the Section 5 Procedures, 28 C.F.R. 51.55(b)(2).

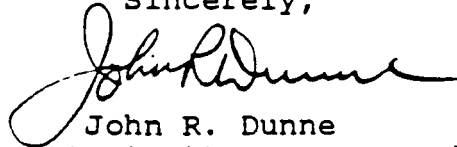
Under the circumstances discussed above, and particularly in light of the time constraints which the legislative and court schedules have imposed, I cannot conclude, as I must under the Voting Rights Act, that the proposed districts are entitled to Section 5 preclearance. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the proposed redistricting plan for Congressional districts for the State of Alabama.

- 3 -

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 the proposed Alabama Congressional redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed Alabama Congressional redistricting plan continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

If you have any questions, feel free to call Voting Section attorney John Tanner (202-307-2897), who has been assigned to handle this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Dunne", written in a cursive style.

John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 01 1992

John E. Pilcher, Esq.
Pilcher and Pilcher
P. O. Box 1346
Selma, Alabama 36702-1346

Dear Mr. Pilcher:

This refers to the 1992 redistricting plan for the board of education in Dallas County, Alabama, 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 March 2, 1992

We have considered carefully the information you have provided, as well as Census data and information received from other interested parties. Between 1980 and 1990, the black share of Dallas County's population increased from 54.5 percent to 57.8 percent. Under the existing plan, blacks constitute a significant majority of the population in Districts 1, 2 and 3 (83%, 65% and 71% black, respectively). Despite the increase in the county's black population proportion, the proposed plan reduces the black percentage in District 2 from 65.3 percent to 57.6 percent. In the context of the electoral history and the pattern of racially polarized voting in Dallas County, this reduction appears to minimize the opportunity afforded black voters to elect a candidate of their choice in this district. See United States v. Dallas County Commission, 850 F.2d 1433 (11th Cir. 1988).

The Supreme Court, in Beer v. United States, 425 U.S. 130, 141 (1976), explained that "the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."

- 2 -

While we recognize that District 2 in the existing plan is underpopulated, our review of the county's demography reveals that an eight percentage point reduction in the black percentage in District 2 was not necessary to comply with the one person, one vote requirement of the United States Constitution. In fact, during the redistricting process, the school board considered and rejected an alternative plan that balanced the county's population among the districts without reducing the black percentage in District 2. The proposed plan also appears to overconcentrate black residents in Districts 1 and 3 (84% and 76% black, respectively), and fragments contiguous black populations in the Selma area between Districts 3 and 5.

In addition, our information suggests that the school board's redistricting decisions were motivated, in part, by a desire to protect the incumbent board member from District 2. While we recognize that the desire to protect incumbents may not in and of itself be an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09, (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Where, as here, the protection afforded an incumbent is provided at the expense of black voters, the school board bears a heavy burden of demonstrating that its choices are not tainted, at least in part, by an invidious racial purpose.

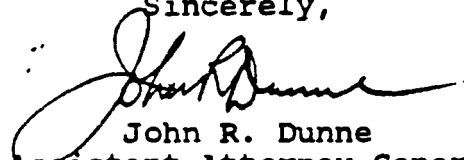
In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plan for the Dallas County Board of Public Education.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1992 redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

- 3 -

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Dallas County Board of Public Education plans to take concerning this matter. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Dunne", written over the typed name.

John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 21, 1992

John E. Pilcher, Esq.
Pilcher and Pilcher
P. O. Box 1346
Selma, Alabama 36702-1346

Dear Mr. Pilcher:

This refers to the 1992 redistricting plan for the board of education in Dallas County, Alabama, 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 May 22, 1992.

We have considered carefully the information you have provided, as well as Census data and information received from other interested parties. Between 1980 and 1990, the black share of Dallas County's population increased from 54.5 percent to 57.8 percent. Under the existing plan, blacks constitute a significant majority of the population in Districts 1, 2 and 3 (83%, 65% and 71% black, respectively). On May 1, 1992, the Attorney General interposed a Section 5 objection to an earlier plan drawn by the school board. Our objection was based on that plan's reduction of the black share of the population in District 2 from 65.3 percent to 57.6 percent. This reduction appeared to minimize the opportunity afforded black voters to elect a candidate of their choice in this district. Moreover, the school board's redistricting decisions appeared to be motivated, in part, by a desire to protect the incumbent board member from District 2. In addition, the objected-to plan overconcentrated black residents in Districts 1 and 3 (84% and 76% black, respectively), and fragmented contiguous black populations in the Selma area between Districts 3 and 5.

- 2 -

Analysis of the plan now under submission reveals that it, too, reduces the black share of the population in District 2 (from 65.3 percent to 61.6 percent) and fails to address the overconcentration and fragmentation of black population identified in our previous objection. As we noted in our May 1, 1992, objection letter, this kind of reduction in black population in District 2 is not necessary to comply with the one person, one vote requirement of the United States Constitution. Moreover, the school board has continued to reject alternative plans that balanced the county's population among the districts without reducing the black percentage in District 2. The board suggests that the changes from the existing plan are motivated by a desire on the part of the board's majority to create a "swing" district, i.e., a district in which the white incumbent in District 2 will have a greater chance of reelection. This result may not be accomplished at the expense of minority voting potential. Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09, (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the school board's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1992 redistricting plan for the Dallas County Board of Education.

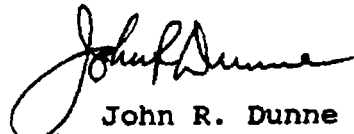
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1992 redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

We also note that the 1992 redistricting plan for the Dallas County Commission was implemented for the June 2, 1992, primary election for the board of education. While the county has obtained Section 5 preclearance for the use of that redistricting plan for county commission elections, Section 5 preclearance is necessary but has not been obtained for use of that plan for county board of education elections.

- 3 -

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Dallas County Board of Education plans to take concerning this matter. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Dunne". The signature is fluid and cursive, with the first name "John" being more prominent.

John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 12, 1992

Philip Henry Pitts, Esq.
Pitts, Pitts & Thompson
P.O. Drawer 537
Selma, Alabama 36702-0537

Dear Mr. Pitts:

This refers to the 1992 redistricting plan for city council districts for the City of Selma in Dallas County, Alabama, 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 initial submission on September 14, 1992; supplemental information was received on October 29, 1992.

We have considered carefully the information you have provided, as well as Census data and information received from other interested parties. According to the 1990 Census, between 1980 and 1990, the black share of Selma's population increased from 52.1 percent to 58.4 percent. There are eight members of the Selma city council elected from single-member districts, with a ninth councilmember, the council president, elected at large. Under the existing plan, blacks constitute a significant majority of the population in Districts 5, 6, 7, and 8 (83, 96, 98, and 93 percent black, respectively).

Despite the increase in the city's black population proportion, the proposed plan continues to concentrate black population in four districts at percentages that are 78, 95, 92, and 92 percent black while fragmenting black populations in other districts. In the context of the electoral history and the pattern of racially polarized voting in the City of Selma, it appears that this plan will limit black voters to an opportunity to elect no more than four members of council, as black voters repeatedly have been unable to elect candidates of their choice in citywide elections.

cc: Public File

- 2 -

Moreover, our review indicates that the extremely heavy concentration of blacks in each of Districts 5 through 8 is not necessary in order to assure that black voters will have an opportunity to elect their candidates of choice in these districts. While some of this overconcentration may be attributable to segregated residential patterns, it appears that there were other redistricting options available that satisfy the City's legitimate redistricting criteria without limiting unfairly the ability of black voters in the city as a whole to elect councilmembers.

In fact, during the redistricting process, an alternative plan, supported by the black community, that balanced the city's black population among the districts and created five in which black voters would be able to elect their chosen candidates was considered and rejected by the white councilmembers. While the Selma city council was not required to adopt a particular plan advocated by the black community, the city is required to show that the proposed plan was not adopted, at least in part, by a desire to deny or abridge the right to vote on account of race or color. In this regard, the reasons presented to us for rejecting this alternative plan appear to be pretextual, motivated by the desire to confine black population concentrations into a predetermined number of districts, and thus ensure a continuation of the current white majority on the council.

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. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1992 redistricting plan for the Selma city council.

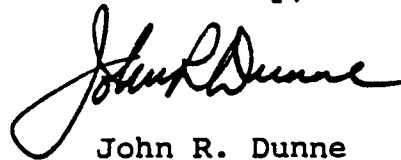
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1992 redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

- 3 -

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Selma plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Since the Section 5 status of the redistricting plan is a matter before the court in Hines v. Smitherman, No. 92-0641-BH-M (S.D. Ala.), we are providing a copy of this letter to the court in that case.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Dunne", is written over the typed name.

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable William Brevard Hand
U. S. District Judge



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 4, 1992

Nicholas H. Cobbs, Jr., Esq.
1110 Main Street
Greensboro, Alabama 36744

Dear Mr. Cobbs:

This refers to the change in method of election from five councilmembers elected at large to five councilmembers elected from single-member districts and the districting plan for the City of Greensboro in Hale County, Alabama, 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 response to our request for additional information on October 5 and November 19 and 20, 1992.

We have considered carefully the information you have provided, as well as comments and information from other interested persons. The 1990 Census reports that black residents constitute 62 percent of the total population and 56 percent of the total voting age population in Greensboro. Our analysis reveals that elections in Greensboro and Hale County are characterized by racially polarized voting and that no black candidates were elected to office under the city's at-large election system. Moreover, in 1987, the city conceded in a consent decree that its present at-large method of election violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

With regard to the change from at-large elections to single-member districts, the Attorney General does not interpose any objection. However, we note that the failure of the Attorney

- 2 -

General to object does not bar subsequent litigation to enjoin the enforcement of this change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the proposed districting plan, however, we cannot reach the same conclusion. Although the city council had no black members at the time, the city proceeded to develop its proposed plan without public participation. The plan provides for two districts (Districts 1 and 3) in which the black voting age population percentage is in excess of 75 percent, and for another district (District 2) in which the black voting age population percentage is 58 percent. The remaining two districts have white voting age population majorities. The city reports that it decided to configure District 2 with a predetermined black population percentage, so as to reflect the black population percentage in the city as a whole. In doing so, however, it appears to have fragmented black population concentrations in order to lower the black percentage in District 2 to produce the city's desired result.

Our analysis of the proposed plan indicates that it would provide black voters the opportunity to elect candidates of their choice in District 1 and District 3 but that the same cannot be said for District 2. This analysis is supported by the August 1992 election using the proposed plan as a court-ordered interim plan. While black-supported candidates were elected to the city council from Districts 1 and 3, a black-supported candidate in District 2 was defeated. Your submission has identified no special circumstances that distinguish the 1992 election from the pattern of minority vote dilution that occasioned the at-large system's violation of Section 2. It appears therefore that the proposed districting plan, particularly the goal of limiting the number of black potential voters in District 2, would restrict black voters to an opportunity to elect no more than two members of the city council, of which the mayor is a sixth voting member, in future elections.

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. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance with regard to the proposed districting plan. Therefore, on behalf of the Attorney General, I must object to the proposed city council districting plan.

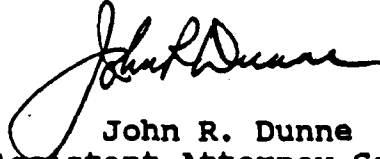
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We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the districting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Greensboro plans to take concerning this matter. If you have any questions, you should call Robert Kengle (202-514-6196), an attorney in the Voting Section.

Because the objected-to plan is the subject of ongoing litigation, Dillard v. City of Greensboro, No. 87-T-1223-N (M.D. Ala) (Thompson, J), we are providing a copy of this letter to the Court and to plaintiffs' counsel.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Myron H. Thompson
United States District Judge



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 24 1992

John E. Pilcher, Esq.
Pilcher and Pilcher
P.O. Box 1346
Selma, Alabama 36702-1346

Dear Mr. Pilcher:

This refers to the October 26, 1992 redistricting plan for the board of education in Dallas County, Alabama, 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 November 2, 1992.

We have considered carefully the information you have provided, as well as Census data, information contained in your submissions of two earlier redistricting plans following the 1990 Census, and information and comments received from other interested parties. As you know, we interposed Section 5 objections to the school board's two previous redistricting plans because of the unjustified and unnecessary retrogression in minority voting strength in proposed District 2. Moreover, the school board's redistricting decisions as to both plans appeared to be motivated, in part, by a desire to protect the incumbent board member from District 2.

Analysis of the plan now under submission reveals that it, too, reduces the black share of the population in District 2 (from 65.3 percent to 63.0 percent). As we noted in our previous letters, no reduction in black population percentage in District 2 is necessary to comply with the one person, one vote requirement of the United States Constitution. Moreover, the school board has continued to reject alternative plans that balanced the county's population among the districts without any reduction in the black percentage of District 2. The school board has articulated no legitimate nonracial justification for its latest choice of a plan which, like its predecessors, effects a retrogression in the position of minority voters given the county's electoral history and pattern of polarized voting. See Beer v. United States, 425 U.S. 130 (1976).

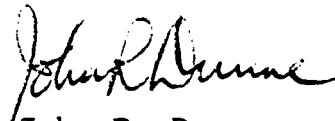
- 2 -

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. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the October 26, 1992 redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Dallas County Board of Education plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

March 15, 1993

Philip Henry Pitts, Esq.
Pitts, Pitts & Thompson
P.O. Drawer 537
Selma, Alabama 36702-0537

Dear Mr. Pitts:

This refers to the December 28, 1992, redistricting plan for city council districts for the City of Selma in Dallas County, Alabama, 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 January 14, 1993.

We have considered carefully the information you have provided, as well as Census data and information received from other interested parties. According to the 1990 Census, between 1980 and 1990, the black share of Selma's population increased from 52.1 percent to 58.4 percent. There are eight members of the Selma city council elected from single-member districts, with a ninth councilmember, the council president, elected at large.

As you know, on November 12, 1992, the Attorney General interposed an objection under Section 5 to the first council redistricting plan adopted by the city following the 1990 Census. Our objection was based on that plan's overconcentration of black residents into four districts that were, respectively, 78, 95, 92, and 92 percent black in total population. The district with the next highest black population percentage was District 4, at 44 percent. In addition, the objected-to plan fragmented contiguous black population concentrations among the remaining districts. We also noted that the city considered and rejected an alternative plan, supported by the black community, that balanced the city's black population among the districts and created five districts in which black voters would be able to

- 2 -

elect their chosen candidates. Moreover, the city's redistricting decisions appeared to have been motivated, in part, by a desire to confine black population concentrations into a predetermined number of districts, and thus ensure a continuation of the current white majority on the council.

The redistricting plan now before us has four districts with black population percentages over 70 percent (71, 74, 93, and 97 percent, respectively), and a fifth district with a black population majority of 60 percent (55.8 percent black in voting age population). We recognize that this redistricting plan partially addresses our concerns about the objected-to redistricting plan by decreasing the concentration of black population in two districts and creating a fifth district with a black voting age population majority. But against the backdrop of the history of racial discrimination and racially polarized voting in the city, the new plan still exhibits some of the same pattern of fragmenting black population concentrations, as that identified previously, in an apparent effort to limit the opportunity for black voters to elect more than four councilmembers.

Indeed, the latest redistricting proposal tends only to underscore the absence of legitimate nonracial reasons for the city's failure to adopt available or easily discernible alternative redistricting plans or approaches that would address the concerns about the fragmentation of black population concentrations. The minutes of the December 28, 1992, council meeting reveal that the vote to adopt the submitted plan was along racial lines. For one councilmember the identity of the author of the plan preferred by the black members of the council was sufficient reason to reject it. Another councilmember noted that the alternative plan was unacceptable because it places him in a district with another incumbent. But our review of the rejected alternative plan indicates that it was readily discernible that incumbents could have been placed in separate districts without decreasing the black population percentage in the fifth black majority district. While the city was not required to adopt a particular redistricting plan or approach advocated by the black community, the city's proffered reasons for rejecting such alternative proposals appear to be pretextual.

- 3 -

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. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the December 28, 1992, redistricting plan for the Selma city council.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Finally, we address your response to the court's December 2, 1992, order in Hines v. Smitherman, No. 92-0641-BH-M (S.D. Ala.), that both plans presented to the court, one proposed by the plaintiff-intervenors and one proposed by the original parties were to be "transmitted by the City of Selma, Alabama to the Attorney General of the United States for approval or rejection under Section 5 of the Voting Rights Act, as amended." While you have transmitted a copy of the plan proposed by the plaintiff-intervenors, you have advised us that the plan was not adopted by the city council, as reflected by the city council minutes of December 28, 1992. Accordingly, because the City of Selma did not enact and does not seek to administer that plan and it does not appear to reflect the policy choices of the City of Selma, no determination under Section 5 by the Attorney General was required or appropriate. See 28 C.F.R. 51.18(a) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Selma plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

- 4 -

Because the Section 5 status of the submitted redistricting plan is a matter before the court in Hines v. Smitherman, we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable William Brevard Hand
U.S. District Judge

Counsel of Record



U.S. Department Justice

Civil Rights Division

Office of the Assistant Attorney General.

Washington, D.C. 20035

Mr. A. Perry Wilbourne
Clerk/Administrator
Drawer 400
Foley, Alabama 36536

AUG 30 1993

Dear Mr. Wilbourne:

This refers to the annexation (Ordinance No. 472-93) to the City of Foley in Baldwin County, Alabama, 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 response to our May 17, 1993, request for additional information on June 29, 1993.

We have considered carefully the information you have provided, as well as Census data, information contained in your submissions of earlier annexations, and information and comments from other interested persons. As you know, on November 6, 1989, the Attorney General interposed a Section 5 objection to the city's proposal to annex three predominantly white residential areas. Our analysis of the information available at that time indicated that the city's annexation policy was not being applied in a nondiscriminatory manner towards predominantly black and predominantly white residential areas whose residents desired annexation to the city. The city offered no legitimate nonracial explanation for its willingness to encourage the petitions for annexation of majority white residential areas while discouraging and rejecting petition efforts by a majority black residential area known as Mills Quarters.

Our analysis of the submitted annexation reveals that it, like the annexations objected to in 1989, reflects a continuation of the city's previously noted practice of annexing areas that can be expected to contain predominantly white population, while discouraging the annexation of areas of predominantly black population. The city has provided no new information since our 1989 objection that suggests that its continued failure to annex majority black areas, such as Mills Quarters or the area of Beulah Heights not already within the city limits, is based on legitimate, nonracial criteria.

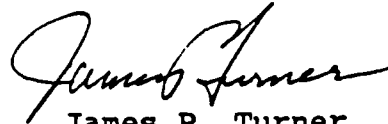
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Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See City of Pleasant Grove v. United States, 479 U.S. 462, 469 (1987); Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Ordinance No. 472-93.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed annexation has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed annexation continues to be legally unenforceable insofar as it affects voting. See Clark v. Roemer, 111 S. Ct. 2096 (1991); Dotson v. City of Indianola, 514 F. Supp. 397, 403 (N.D. Miss. 1981); 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 City of Foley plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

November 16, 1993

Lynda K. Oswald, Esq.
Assistant Attorney General
Alabama State House
11 South Union Street
Montgomery, Alabama 36130

Dear Ms. Oswald:

This refers to Act No. 93-882 (1993), which creates a sixth judicial position in the Sixth Judicial Circuit to be elected at large by numbered post with a majority vote requirement and provides an implementation schedule therefor for the State of Alabama, 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 September 17, 1993; supplemental information was received on September 20, 1993.

We have considered carefully the information you have provided, as well as 1990 Census data, comments received from interested parties, and information contained in the state's earlier submissions of the creation of additional judicial positions in other judicial circuits and the record and decision in SCLC v. Evans, 785 F. Supp. 1469 (M.D. Ala. 1992), appeal docketed, No. 92-6257 (11th Cir.). In the Sixth Judicial Circuit, which is coterminous with Tuscaloosa County, black persons constitute 26 percent of the population and 23 percent of the voting age population. Our review of the election analyses and other evidence in the SCLC case leads us to conclude that voting in interracial contests in Tuscaloosa County is characterized by racial polarization. In addition, it appears that potential candidates of choice of black voters may have been deterred from running for the circuit court due in part to this polarization and the existing at-large election system. Indeed, prior to a recent appointment to the bench, no black person had served as a circuit court judge in the Sixth Circuit.

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In contrast, black voters in Tuscaloosa County have been able to elect candidates of their choice to county governing bodies when, as the result of voting rights litigation, the county has implemented alternatives to an at-large electoral system. See, e.g., Thomas v. Tuscaloosa County, C.A. CV 84-P-1041-W (N.D. Ala. March 14, 1985) (consent decree); Dillard v. Crenshaw County, C.A. No. 87-T-1234-N (M.D. Ala.). Thus, there are available alternatives for electing circuit judges that would afford black voters an equal opportunity to participate in the electoral process and to elect judicial candidates of their choice.

We have analyzed the state's decision to expand the at-large election system in the Sixth Judicial Circuit against this backdrop. We recognize that the state has asserted that it has an interest in adding a sixth judgeship to the Sixth Circuit in order to relieve an overcrowded court docket. However, serving that interest need not be tied to expanding the at-large method of electing Sixth Circuit judges, which has not provided black voters an equal opportunity to participate in the process and to elect judges, as opposed to an alternative election system that would fairly recognize black voting strength. Under Section 5, the submitting authority must demonstrate that the choices underlying the proposed change are not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983).

Prior to the state's adoption of the change at issue here, the Attorney General had interposed Section 5 objections to similar expansions of the at-large systems in other judicial circuits in the state. On November 8 and December 23, 1991, the Attorney General interposed objections to the creation of additional judicial positions, to be elected at large by numbered post and majority vote, in the Tenth (Jefferson County), Fifteenth (Montgomery County), and Twentieth (Henry and Houston Counties) Judicial Circuits. On May 26, 1992, after considering the state's request for reconsideration based, in part, upon an examination of the SCLC case, the Attorney General declined to withdraw either of the earlier objections.

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The SCLC case involves a challenge brought under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, by private plaintiffs to Alabama's system for electing circuit court and district court judges in certain areas of the state, including the Sixth Circuit, at issue here, as well as the Tenth, Fifteenth and Twentieth Circuits, at issue in our prior Section 5 determinations noted above. The district court's ruling that the challenged at-large system does not violate Section 2 is currently on appeal before the United States Court of Appeals for the Eleventh Circuit. As an initial matter, the United States is not a party in the SCLC litigation and is not bound by decisions in private Section 2 litigation in determining whether Section 5 preclearance requirements have been met. See, e.g., City of Richmond v. United States, 422 U.S. 358, 373-374 n.6. (1975).

Moreover, the reasoning of the district court's opinion in the SCLC decision appears to be at odds with the Eleventh Circuit's recent opinion in Nipper v. Smith, 1 F.3d 1171 (11th Cir. 1993). For example, the district court in SCLC found that voting in the Sixth Circuit was not racially polarized, relying primarily on elections involving only white candidates. By contrast, the Eleventh Circuit held in Nipper that such reliance is misplaced when elections involving interracial contests show "pervasive polarization." 1 F.3d at 1180. In addition, the Nipper decision holds that using the percentage of black lawyers as a basis for determining minority electoral success, as the district court did in SCLC, improperly discounts the "history of racial discrimination and the exclusion of black citizens from access to legal education." 1 F.3d at 1183.

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. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, a submitted change may not be precleared if its implementation would lead to a clear violation of Section 2. See 28 C.F.R. 51.55(b). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the proposed expansion of the existing at-large, numbered-post, majority-vote system for electing candidates to the Sixth Judicial Circuit meets the preclearance requirements. Therefore, on behalf of the Attorney General, I must object to the submitted changes.

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We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the additional judicial position for the Sixth Circuit continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the proposed implementation schedule is directly related to the objected-to change, the Attorney General will make no determination with respect to that change at this time. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Alabama plans to take concerning this matter. If you have any questions, you should call Donna M. Murphy (202-514-6153), an attorney in the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "James P. Turner", is written over the typed name.

James P. Turner
Acting Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

January 3, 1994

Nicholas H. Cobbs, Jr., Esq.
City Attorney
1110 Main Street
Greensboro, Alabama 36744

Dear Mr. Cobbs:

This refers to the 1993 districting plan for the City of Greensboro in Hale County, Alabama, 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 November 2, 1993; supplemental information was received on December 21, 1993.

We have considered carefully the information you have provided, as well as comments and information from other interested persons. According to the 1990 Census, black residents constitute 62 percent of the total population and 56 percent of the voting age population in Greensboro. On December 4, 1992, the Attorney General interposed a Section 5 objection to the initial districting plan adopted by the city following the 1990 Census.

Our analysis of the 1992 districting plan showed unnecessary fragmentation of black population concentrations in several areas of the city. Information made available to us indicated that the city configured its boundary lines with the express purpose of keeping District 2 under the objected-to plan to a predetermined black population percentage designed to reflect the black population percentage in the city as a whole. Within the context of the polarized voting patterns that appear to be prevalent in Greensboro city elections, and virtually a closed districting process, the objected-to plan appeared unnecessarily to limit black voters to an opportunity to elect only two of the five councilmembers. On June 15, 1993, we declined to withdraw our objection based upon the city's failure to provide new factual information or legal arguments in support of its reconsideration request.

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The 1993 districting plan makes minimal changes to the objected-to plan. With regard to District 2, which had been the focus of our concern, the 1993 plan adds one block to the district and removes another block from the district. While the plan provides for slight increases in the black population percentages in District 2, the opportunity for black voters to elect a representative of their choice in that district appears to have been constrained deliberately, taking into account the continued fragmentation of black population concentrations, the pattern of racially polarized voting and the reduced electoral participation by black persons, which is traceable to a history of discrimination.

The city has provided no satisfactory explanation for limiting black electoral opportunities in this manner. Indeed, the city was aware of several alternative plans that created three districts in which black voters constituted a greater majority of the voting age population in a third district than in proposed District 2. While the city was not required under the Voting Rights Act to adopt any specific alternative plan, it is not free to adopt a districting plan which, as would appear here, is calculated to limit black voting strength.

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. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance with regard to the proposed districting plan. Therefore, on behalf of the Attorney General, I must object to the 1993 city council districting plan.

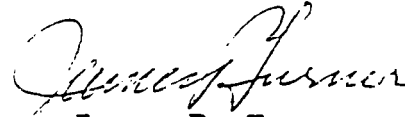
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the districting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Greensboro plans to take concerning this matter. If you have any questions, you should call Delora L. Kennebrew (202-307-3718), a Deputy Chief in the Voting Section.

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Because the objected-to plan is the subject of ongoing litigation, Dillard v. City of Greensboro, No. 87-T-1223-N (M.D. Ala) (Thompson, J), we are providing a copy of this letter to the Court and to plaintiffs' counsel.

Sincerely,

A handwritten signature in cursive script, appearing to read "James P. Turner".

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Myron H. Thompson
United States District Judge

Edward Still, Esq.



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

January 31, 1994

Lynda K. Oswald, Esq.
Assistant Attorney General
Alabama State House
11 South Union Street
Montgomery, Alabama 36130

Dear Ms. Oswald:

This refers to Amendment 425 to the Alabama Constitution, insofar as it provides in the State of Alabama that a referendum on a local constitutional amendment may not be held unless it is first approved by the Local Constitutional Amendment Commission, 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 most recent response to our November 27, 1990, request for additional information on December 2, 1993.

We have considered carefully the information you have provided, as well as information from other interested persons. According to the 1990 Census, the State of Alabama has a total population of 4,040,587, of whom 25 percent are black. Amendment 425, adopted in 1982, provided for a change in the procedure for ratifying local amendments to the state constitution (i.e., amendments that affect only one county). Previously, local amendments and amendments of general statewide application were ratified in the same manner -- the proposed amendment initially would need to be approved by a three-fifths vote of each house of the legislature, and then be approved in a statewide referendum. Amendment 425 worked two principal changes in this procedure. First, it provides that after the legislature approves a local amendment, a referendum may not be held unless a commission known as the Local Constitutional Amendment Commission (created by Amendment 425) "unanimously approve[s]" the amendment. This Commission is composed of five state officials, the governor, lieutenant governor, attorney general, secretary of state, and speaker of the House of Representatives. Second, if the amendment proceeds to a referendum, the referendum is held only in the affected county.

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In 1982, the state made a limited Section 5 submission with respect to then-proposed Amendment 425 (which was awaiting approval in the statewide referendum). The state's submission letter specified that the only change that would be occasioned by the amendment would be the change in the constituency that votes on local constitutional amendments. The submission letter made no mention of the creation of the Commission and the role that it would play in determining whether local amendment referenda are held. Accordingly, this latter change was not submitted for preclearance in 1982, and was not precleared when the Attorney General responded to the 1982 submission by granting preclearance. Clark v. Roemer, 111 S.Ct. 2096 (1991); McCain v. Lybrand, 465 U.S. 236 (1984). Nevertheless, the state proceeded to implement the Commission review procedure.

The state did not seek Section 5 preclearance for the Commission review procedure until it made the instant submission in 1990, following a 1989 request by this office that the change be submitted. The state's submission letter described the scope of the Commission's review function as follows:

the . . . Commission may (1) approve a vote by the people of the affected county and political subdivision on a proposed constitutional amendment affecting only one county, (2) approve a statewide vote on a proposed constitutional amendment affecting only one county or (3) fail to submit the proposed constitutional amendment to the vote of the people when one or more members of the Commission do not vote in favor of the proposed amendment.

Subsequently, the Alabama Supreme Court ruled that the Commission does not possess the authority to redirect a proposed amendment to the statewide ballot, and that the sole authority of the Commission is either to approve or veto proposed local amendments. Hunt v. Decatur City School District, No. 1911844 (Aug. 27, 1993). With regard to this veto authority, the state has identified no limitation on the reasons why a single Commission member may decide to veto an amendment, and there is no indication that the Commission's review authority is limited to the relatively neutral question of whether an amendment complies with the other procedural requirements of Amendment 425 (e.g., the requirement that the amendment affect only one county).

After reviewing the state's 1990 submission, we determined that the information that had been provided was insufficient to enable us to make the requisite Section 5 determination and accordingly we wrote the state in November 1990 requesting that certain items of additional information be provided. Procedures for the Administration of Section 5 (28 C.F.R. 51.37). Since then, we have sought, with only limited success, to obtain the

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requested information. The state now has asked that we proceed to make a final determination, although significant items of requested information still have not been provided (e.g., a detailed description of the process leading to the creation of the Commission, the reasons for its creation, and information as to all the local amendments that have been vetoed by the Commission).

According to the available information, a number of vetoes have been cast by the Commission against proposed local amendments that would have changed the procedure for filling vacancies in certain local offices in several majority-black counties. The state has not provided any information as to why these vetoes were cast but it does not appear that these amendments were blocked for failure to comply with other requirements of Amendment 425. On the other hand, we have received allegations that, at least in part, the vetoes were racially motivated.

Our analysis indicates that the addition of the Commission procedure to the amendment process may diminish the opportunity of black voters to obtain referenda on issues of importance to them. Without the Commission procedure, a proposed amendment proceeds to a referendum vote if the amendment is approved by the legislature. In the House and Senate, we understand that local amendments generally are approved if they meet with the approval of the local legislative delegation. The members of these delegations in turn often are legislators with respect to whom black voters have substantial influence. The Commission, on the other hand, is principally composed of officials elected in statewide elections where black voters exert less influence.

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. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Amendment 425 insofar as it provides that a referendum on a local constitutional amendment may not be held unless it is first approved by the Local Constitutional Amendment Commission.

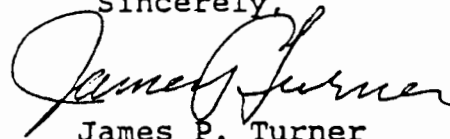
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may

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request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to change continues to be legally unenforceable. Clark v. Roemer, supra; 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Alabama plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), Special Section 5 Counsel in the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "James P. Turner".

James P. Turner
Acting Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

APR 14 1994

The Honorable Jimmy Evans
Attorney General
State of Alabama
Alabama State House
11 South Union Street
Montgomery, Alabama 36130

Dear Mr. Attorney General:

This refers to the State of Alabama's submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, of the following voting changes:

1. Act No. 602 (1969), which provided for two additional associate justice positions on the supreme court, the initial appointment of persons to the new positions, and a change in the method of staggering terms; Act No. 987 (1969), which provided for the creation of the court of civil appeals and the court of criminal appeals each with three members elected at large (in partisan elections, with a majority vote requirement in the primary, and with numbered positions), six-year terms of office, staggered terms for the court of civil appeals and concurrent terms for the court of criminal appeals, and the appointment of the initial judges for the courts; Act No. 75 (1971), which provided for two additional positions on the court of criminal appeals, the initial appointment of persons to the new positions, and a change to staggered terms; and Act No. 346 (1993), which provides for two additional positions on the court of civil appeals and a change in the method of staggering terms;

2. The provisions of the initial proposed consent judgment in White v. State of Alabama, CV 94-T-94-N (M.D. Ala.); and

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3. The revised proposed consent judgment in White v. State of Alabama, as amended on April 14, 1994, which provides for two additional positions on the court of criminal appeals and the court of civil appeals, the method for initially filling those positions by appointment, a conditional change in the method of selecting supreme court associate justices in certain years from election to appointment and the appointment method, a conditional increase in the number of supreme court associate justices (up to two) and the method of initially filling those positions by appointment, the procedure for eliminating any additional associate justice positions created pursuant to the judgment, and the appointment method of filling vacancies on the appellate courts in certain circumstances.

We received your submission of the revised proposed consent judgment, as amended, on April 14, 1994, and the submission of that proposal is directly related to, and recommences the 60-day review period for, the previously pending changes enacted by the legislative acts enumerated in paragraph 1. Procedures for the Administration of Section 5 (28 C.F.R. 51.39). In addition, by a letter of April 7, 1994, the state withdrew its Section 5 submission of the changes accomplished by the initial proposed consent judgment in White. Accordingly, no determination by the Attorney General is required concerning that matter. 28 C.F.R. 51.25(a).

We have considered carefully the information you have provided, as well as information from other interested persons. 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. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In addition, the Section 5 Procedures (28 C.F.R. 51.55(b)(2)) require that preclearance be withheld where a change presents a clear violation of the results standard incorporated in Section 2 of the Voting Rights Act, 42 U.S.C. 1973. Where the submitted changes involve additional elective positions, those changes must be reviewed in light of the method by which the positions will be elected.

According to the 1990 Census, Alabama has a total population of 4,040,587 persons, of whom 25 percent are black. Black persons constitute 23 percent of the state's voting age population. The black population is concentrated in the state's three largest cities -- Birmingham, Mobile, and Montgomery -- and in a region known as the Black Belt which extends horizontally across the south-central portion of the state.

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As of November 1, 1964, when the state became covered under Section 5, the state supreme court was composed of an elected chief justice and six elected associate justices. We now are called upon to review the state's establishment in 1969 of two additional associate justice positions in the context of an at-large method of election, which includes a majority vote requirement in the partisan primary and numbered positions when more than one position for the court is on the ballot.

On November 1, 1964, the state appellate system included one elected intermediate court of appeals. Before us for Section 5 review is the abolishment of that court in 1969 and its replacement by the court of civil appeals and the court of criminal appeals, each elected at large, with the majority vote requirement in the primary, numbered positions, and staggered terms.

The voting changes occasioned by the proposed revised consent judgment in White v. State of Alabama also are before us for Section 5 review. In White, plaintiffs challenge under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, the at-large method of electing the three appellate courts. The goal of the settlement's remedial provisions

is to serve the compelling state interest in remedying the past and present effects of racial discrimination and current electoral conditions, which inhibit members of the plaintiff class [of all black resident citizens and electors] in electing candidates of their choice to the appellate courts of the State of Alabama. The provisions are intended as a flexible means of providing class members a meaningful and equal opportunity to elect candidates of their choice to judgeships on the Alabama Courts of Civil and Criminal Appeals and the Alabama Supreme Court. In addition, the provisions are intended to serve the beneficial goal of enhancing racial diversity in the membership of those courts.

Proposed Final Judgment, ¶ 4.

The proposed consent judgment does not make a permanent change in the at-large method of electing the state's appellate courts. Instead, its goals are to be accomplished through the establishment of an alternative appointment process for the appellate courts which is to be invoked in certain specific circumstances. The appointments are to be made by the governor, which is the current practice when vacancies occur (and which is the practice when new appellate court judgeships are filled before the first election). However, under the proposed judgment, the governor would select the appointees from a list of

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candidates proposed by a nominating commission created by the judgment. The commission is to be composed of two members selected to represent the plaintiff class, one selected by the Alabama Lawyers Association, one selected by the Alabama State Bar Association, and one selected by the other four (if they are unable to agree then the fifth is selected by the black caucus in the state legislature). Any qualified attorney in the State of Alabama may apply to the nominating commission.

Each intermediate appellate court is to be expanded to seven members with the initial judges to be appointed in 1996 pursuant to the procedure outlined above, and the positions thereafter would be elected pursuant to the existing system. In addition, vacancies thereafter would be subject to the special appointment procedure in certain defined circumstances. For associate justice positions on the supreme court, the special appointment procedure would be invoked in certain circumstances if a vacancy arises, if an associate justice decides not to seek re-election in the years 1996, 1998, and/or 2000, or if an additional associate justice position is established in 1998 and/or 2000. The overall goal of the proposed judgment is that, by the year 2001, at least two members of the plaintiff class or persons appointed through the special appointment procedure will be serving on each appellate court. Thereafter, if a vacancy arises on an appellate court and there are fewer than two such persons serving on that court, the governor's existing authority to appoint an interim justice or judge would be modified to require that the appointee be selected from a list proposed by the special nominating commission. The special appointment procedures provided for in the proposed judgment would terminate upon the completion of four, six-year judicial election cycles following the 1994 election, unless extended by the court in White. In addition, during the term of the judgment, plaintiffs may seek further relief or the state may seek to terminate the judgment based upon circumstances specified in the judgment.

In analyzing these matters, we begin by reviewing the legislatively enacted changes without reference to the provisions of the revised consent judgment. The consent judgment is provisional in that it still awaits review by the court in White. In addition, our conclusions with respect to the legislative changes will then inform our judgment as to the necessity and adequacy of the proposed consent judgment changes.

There currently is one black person, the Honorable Ralph Cook, serving on the nine-member supreme court. He was appointed by the governor in 1993 after the first black person to serve on that court, the Honorable Oscar Adams, retired in mid-term. Justice Cook is up for election for the first time this year. Justice Adams also gained his position initially by appointment

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(in 1980) and was elected in 1982 and 1988. No other black persons have run for positions on the supreme court. No black persons have been appointed to either the court of civil appeals (which currently has three members) or the court of criminal appeals (which currently has five members), and no black persons have run for these courts without the benefit of being an appointed incumbent.

Elections at all levels in the state generally are characterized by racially polarized voting. We have repeatedly found this to be the case in past Section 5 reviews, most recently on a statewide basis in interposing an objection, on March 27, 1992, to the state's 1992 congressional redistricting plan. As reflected in the stipulations filed by the plaintiffs and defendants in White as an attachment to the proposed consent judgment, courts also have found polarized voting in numerous Section 2 and Fourteenth Amendment dilution lawsuits. Most black elected officials in the state are elected from black majority districts.

Our analysis indicates that polarized voting extends to judicial elections. In 1991 and 1993, the Attorney General interposed Section 5 objections to the establishment of additional circuit court judgeships in four circuits based on the conclusion that the at-large method of electing these judgeships, in the context of polarized voting and other electoral factors, denied black voters an equal opportunity to elect candidates of their choice. In SCLC v. Evans, 785 F. Supp. 1469 (M.D. Ala. 1992), vacated, No. 92-6257 (11th Cir. Feb. 28, 1994), reh'g en banc granted, 1994 Westlaw 93271 (11th Cir. Mar. 23, 1994), a Section 2 challenge to the at-large system for Alabama trial court judges, plaintiffs' expert presented convincing evidence of polarized voting in black-white election contests in the challenged circuits.

As noted, only one black person has faced election for the appellate courts, the Honorable Oscar Adams. Our analysis indicates that, in the 1982 runoff, he narrowly defeated a white opponent in a racially polarized election that was marked by racial campaign appeals. In 1988, he faced opposition only in the general election, and, like all other Democratic appellate court candidates in modern history, he was elected. Our analysis indicates that black candidates have not run for the courts of appeals, and no other black candidate has run for the supreme court, because of the perception among potential black candidates and black political leaders that running as a nonincumbent would be a futile exercise under the existing at-large system. See Westwego Citizens for Better Govern. v. Westwego, 872 F.2d 1201, 1208-1209 & n.9 (5th Cir. 1989) (courts should consider the possibility that black candidates "'don't run because they can't win'" in evaluating dilution evidence).

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There are a number of other electoral factors relevant to an evaluation of the existing at-large election system. Black voters suffer from a history of discrimination in education, employment, and other areas which has created a significant disparity between the socioeconomic status of the state's black and white citizens. This disparity in turn inhibits the ability of black voters to participate on an equal basis in state elections. Black voters also have been the victims of a history of discrimination in voting, which has continued past the adoption of the Voting Rights Act to the present day. The use of a majority vote requirement and numbered positions enhances the discriminatory nature of the at-large system.

Also relevant are the circumstances that have inhibited or burdened potential black appellate court candidates. The state has a recent history of racial discrimination in legal education. In addition, campaigns for an appellate court position require the financial means to campaign on a statewide basis and, we understand, potentially may cost hundreds of thousands of dollars.

Alternative election systems exist that would fairly reflect black voting strength in the state. For example, with respect to the proposed five-member courts of appeals, the black population is sufficiently large and geographically concentrated that, in a fairly drawn single-member district plan, blacks would constitute a majority of the voting age population in one district. Similarly, with respect to the supreme court, a fairly drawn districting plan would include two associate justice districts in which blacks would constitute a majority of the voting age population.

Accordingly, without the proposed consent judgment, the voting changes enacted by the submitted legislative acts are not entitled to Section 5 preclearance.

The settlement is predicated on the view that, in appellate court elections, incumbency (through election or appointment) provides substantial benefits to candidates. In that regard, seven of the 17 present members of the appellate courts initially obtained their positions through a gubernatorial appointment. Since 1968 there have been 26 appointments to the appellate courts but only two have been of black lawyers. Thus, it is asserted that black voters (who historically have favored black candidates as their candidates of choice) will gain an equal opportunity to elect candidates of their choice by temporarily establishing the above-described structured appointment system. Once the appointments occur, it further is asserted that the electoral factors that render the at-large election system discriminatory will be diminished such that, in future elections, black voters will be able to elect candidates of their choice in a manner reflective of their voting strength in the state.

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Our analysis leads us to conclude that the state has met its burden of demonstrating that the changes occasioned by the revised proposed consent judgment (as amended on April 14, 1994) do not have the purpose or effect of minimizing black voting strength. Nor do they present a clear violation of Section 2 of the Act. Accordingly, the Attorney General does not interpose any objection to the changes occasioned by the revised proposed consent judgment. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar any litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these changes if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. 28 C.F.R. 51.41 and 51.43.

However, although the consent judgment changes are ripe for review under Section 5, McDaniel v. Sanchez, 452 U.S. 130 (1981), 28 C.F.R. 51.22, the contingent nature of these changes precludes them from providing a basis for preclearing the legislatively enacted changes at this time. Accordingly, on the behalf of the Attorney General, I must interpose an objection to the changes for the supreme court occasioned by Act No. 602 (1969) in the context of the existing at-large method of electing the court, and I must interpose an objection to the changes for the courts of criminal and civil appeals occasioned by Act Nos. 987 (1969), 75 (1971), and 346 (1993) in the context of the at-large method of electing these courts. Should the court in White grant final approval to the proposed judgment, the state at that time should seek reconsideration of this objection and the Attorney General would be prepared to grant the requisite preclearance. 28 C.F.R. 51.45. Of course, under Section 5 the state also has the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the legislative changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color.

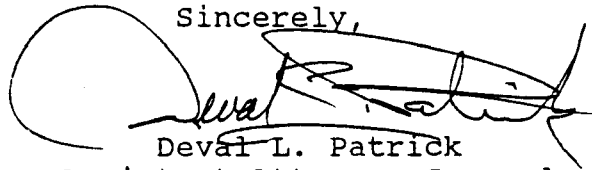
Finally, we note that the Section 5 court in White is poised to address the question whether injunctive relief should be granted based on the unprecleared status of appellate court judgeships that are up for election this year. See Clark v. Roemer, 111 S. Ct. 2096 (1991). The proposed consent judgment contemplates that elections will go forward this year under the at-large election system. We understand that the court will seek to conduct its review of the proposed judgment at the earliest possible time. In these exceptional circumstances, where the Attorney General has precleared the changes occasioned by the proposed judgment and is prepared to preclear the legislative changes if the court grants its approval to the judgment, we believe that it would be appropriate to defer granting injunctive relief and thus allow the primary election for the unprecleared

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positions to be conducted. Should the court not approve the judgment before this year's general election, the issue of granting injunctive relief should be revisited. We will be present at the oral argument to be held tomorrow, April 15, in White to respond to any questions the court may have in this regard.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Alabama plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), Special Section 5 Counsel in the Voting Section. Because of the pendency of this matter before the court in White, we are sending by facsimile transmission copies of this letter to the court and counsel of record.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval L. Patrick", is written over a large, loopy circular flourish.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

DEC 13 1994

Marc Givhan, Esq.
Deputy Attorney General
State of Alabama
Alabama State House
11 South Union Street
Montgomery, Alabama 36130

Dear Mr. Givhan:

This refers to the State of Alabama's request that the Attorney General reconsider and withdraw the April 14, 1994, objection interposed under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the voting changes for the state supreme court and the courts of criminal and civil appeals occasioned by Act Nos. 602 (1969), 987 (1969), 75 (1971), and 346 (1993). We received your request for reconsideration on October 14, 1994.

As you are aware, in the April 14 determination letter, the Attorney General granted Section 5 preclearance to the changes affecting the state appellate courts occasioned by the proposed consent judgment (as revised on April 14, 1994) in White v. State of Alabama, CV 94-T-94-N (M.D. Ala.) (preclearance was granted to subsequent revisions to the consent agreement on September 20, 1994). The Attorney General further indicated in the April 14 letter that the proposed consent judgment would remedy the concerns with the legislatively enacted changes but since implementation of the consent judgment was contingent on judicial approval, it did not provide a basis for preclearing the legislatively enacted changes at that time. Finally, the state was advised that "[s]hould the court in White grant final approval to the proposed judgment, the state at that time should seek reconsideration of this objection and the Attorney General would be prepared to grant the requisite preclearance."

On October 6, 1994, the district court in White approved the consent judgment. The district court's ruling has been appealed to the Eleventh Circuit.

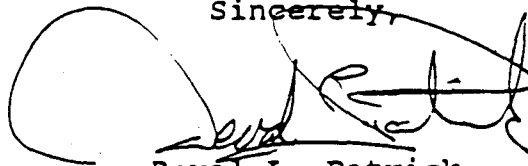
- 2 -

The state's reconsideration request is based solely on the approval of the consent judgment by the district court. However, the fact that the judgment now has been appealed means that the judicial approval process is not yet final. In these circumstances, it would not be appropriate to withdraw the objection and, accordingly, on behalf of the Attorney General, I must decline to do so at this time.

We recognize the paramount interest of the state and the United States in avoiding disruption of the administration of justice in Alabama. By declining to withdraw the objection at this stage in the judicial process, we do nothing to affect the status of the consent judgment or the status of the legislatively enacted changes. In light of the district court's approval of the consent judgment and the Attorney General's continuing commitment to preclear the legislatively enacted changes at such time as the judgment obtains final judicial approval, there has been no change to the "extreme circumstance" cited by the Section 5 court in White as the basis for denying injunctive relief, in its order of April 15, 1994.

Should you have any questions about this matter, please telephone Special Section 5 Counsel Mark Posner of the Voting Section, at (202) 307-1388.

Sincerely,

A handwritten signature in black ink, appearing to read 'Deval L. Patrick', with a large, sweeping initial 'D'.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 6, 1998

E. Paul Jones, Esq.
P.O. Box 448
Alexander City, Alabama 35011-0448

Dear Mr. Jones:

This refers to the reduction in the number of county commissioners from six to five and the redistricting plan for Tallapoosa County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your most recent response to our May 23, 1997, request for additional information on November 20, 1997. On December 8, 1997, we received information responsive to our May 23, 1997, request from the Alabama Reapportionment Office in Montgomery, Alabama, which was prepared for the Tallapoosa County Commission during its redistricting process.

We have given careful consideration to the information you have provided, along with Census data and information and comments from other interested persons. Our review of the submitted changes is also informed by a history of noncompliance on the part of the county with legal requirements (constitutional, statutory, and court mandated) designed to protect the right to vote and to ensure minority voters, in particular, an equal electoral opportunity.

For example, during most of the 1970's the county implemented an unprecleared at-large method of election, in the absence of a fairly apportioned redistricting plan for its five single-member districts. In response to a Section 5 enforcement action brought by minority residents, the county in 1983 submitted for Section 5 review the change to an at-large method of election. Holly v. Sharpe, C.A. No. 82-17-E (M.D. Ala. 1982). We interposed an objection due largely to the retrogressive effect the change would have on minority electoral opportunity.

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Following our 1983 objection, the county obtained preclearance for a fairly apportioned redistricting plan in 1985. However, despite significant malapportionment in this plan revealed by 1990 Census data and the failure of minority voters to elect a candidate of choice in the sole district with a bare black population majority, the county did not adopt a properly apportioned plan that fairly recognized minority voting strength until we brought suit under Section 2 of the Voting Rights Act, 42 U.S.C. 1973. United States v. Tallapoosa County, No. CV-93-D-1362-E (M.D. Ala. filed November 12, 1993).

In an effort to resolve this lawsuit, we negotiated to develop a remedial five-member redistricting plan for the county commission. In addition, representatives of the minority community, notably the Alabama Democratic Conference and its local affiliate, were involved in discussions with the county over a suitable remedy. In the course of these discussions, redistricting plans were developed which indicated that a five-member plan could be drawn containing reasonably compact districts, including one with a black voting age percentage in the high 50's.

The parties were unable to agree on a five-member redistricting plan to remedy the Section 2 violation. The county proposed a temporary expansion of the commission to six members, and we agreed. Increasing the size of the commission permitted the county to fashion a plan in which no white incumbent would have to oppose another white incumbent or would have to run in a majority black district. The parties agreed to a consent decree which the court approved on April 22, 1994, directing that the 1994 election be held under a plan containing six districts. The six-member plan developed by the county for use in the 1994 election contained a district with a 62.4 percent black voting age population (District 6). The election that followed produced the first black Tallapoosa County Commissioner this century.

The consent decree entered by the court also included the following joint representations by the parties regarding the factors that exist in the county that establish a prima facie violation of Section 2: (a) the county's black population is sufficiently numerous and geographically compact such that black persons can constitute a majority of the voting age population and registered voters in one out of five single-member districts; (b) voting in the county is racially polarized; and (c) white voters vote sufficiently as a bloc to usually defeat candidates of black voters' choice except in districts where blacks are a substantial majority of the electorate.

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For the 1998 election and thereafter, the consent decree required that the county adopt a fairly apportioned five-member plan with one district with a majority black voting age population. At the time the consent decree was agreed to Commissioner John Neighbors had made known that, if elected in 1994, he would not seek reelection in 1998. Thus, the development of a five-member plan would likely not require any white incumbents seeking reelection in 1998 to run in the majority black district or against another incumbent.

The redistricting process for the plan to be used in 1998 began in 1995 and culminated in the adoption of the proposed plan in March 1997. It appears that the process on the whole proceeded in a manner calculated to minimize participation by the public in general, and the black community in particular. In contrast to the contacts and discussions in the period leading to the development of the 1994 plan, the county appears to have made no meaningful effort after 1994 to obtain the views of members of the minority community other than District 6 Commissioner Garland Gamble. Further, prior to the two occasions when the commission formally voted on the adoption of a plan, it appears that the commission held no public hearings to seek the public's views on redistricting for 1998 and failed to provide adequate public notice, as apparently required by Alabama Code § 11-3-1.1.

In 1995 Commissioner Gamble proposed a five-member plan containing reasonably compact districts, including one with a 57.5 percent black voting age population. His plan only paired two incumbents in the same district, himself and John Neighbors, the District 1 incumbent who had said that he would not be a candidate for reelection in 1998. For over a year, it appears, Mr. Gamble's proposal was not opposed by any other member of the county commission. However, in September 1996 the county resumed its redistricting efforts; this occurred shortly after Commissioner Neighbors reversed his prior statement and announced his intention to run for reelection. Stating that Commissioner Gamble's plan was unacceptable to him, Commissioner Neighbors proposed a plan in which the black population in the majority black district was reduced in order to improve his chances for reelection. In the plan proposed by Commissioner Neighbors he and Commissioner Gamble would be paired in a district having a black voting age population of 49.2 percent. No other district would have a black voting age population exceeding 30 percent.

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The first formal vote on a 1998 redistricting plan took place in October 1996. Choosing between the two plans, the commission, voting along racial lines, adopted Commissioner Neighbors's plan over Commissioner Gamble's plan, despite the former plan's failure to meet the consent decree's requirement that one district have a black voting age population majority. A copy of the plan was provided to the District Court and to us as a party to the litigation, but it was not submitted for Section 5 review. Subsequently, the county rescinded its adoption of that plan. In its stead, the county adopted a similar plan in which the black voting age population of the minority district was increased by 2.5 percentage points, apparently in order to achieve a marginal majority in black voting age population. It is this plan that the county has submitted for Section 5 review.

According to 1990 Census data, black persons represent 26.2 percent of the county's total population, and 23.2 percent of its voting age population. Both the existing six-member plan and the proposed five-member plan contain only one district with a majority black population. In the existing plan this district has a 62.4 percent black voting age population based on 1990 Census data. In the proposed plan this district has a 51.7 percent black voting age population. The latter figure is likely to be even lower given the inclusion of an area with white, post-1990 population growth located south of Alexander City and west of Highway 63. Thus, the proposed plan reduces the black voting age population in the majority black district by at least 10.7 percentage points. The proposed majority black district is also very similar in configuration and population to the "minority" district in the plan in effect in 1990 in which the candidate of choice of minority voters lost the election by a significant margin.

Our analysis of the proposed plan indicates that the reduction in the black voting age population in the majority black district, in the context of the county's electoral history and pattern of racially polarized voting, is likely to affect adversely the ability of black voters to elect a candidate of their choice to the county commission. Furthermore, alternative five-member plans prepared before and after the adoption of the existing six-member plan demonstrate that such a large reduction in black population percentage is not necessary in order to achieve a fairly apportioned, constitutional five-member plan. The county has provided no information that would support a conclusion that the county's minority voters would have a fair opportunity to elect a candidate of choice under the proposed plan.

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Taken together, the history of the instant redistricting process and its results raise serious concerns that the county, in reducing the black voting age population in the proposed majority black district, purposely impaired the ability of black voters to elect a candidate of choice in order to protect the reelection opportunities of a white incumbent. While we recognize that the desire to protect incumbents is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991) (supervisors who "acted primarily on the political interest of self-preservation" held to have intentionally discriminated when "they chose fragmentation of the Hispanic voting population as the avenue by which to achieve this self-preservation"); id. at 778-79 & n.1 (Kozinski, J., concurring in part and dissenting in part); Ketchum v. Byrne, 740 F.2d 1398, 1408 (7th Cir. 1984), cert. denied, 471 U.S. 1185 (1985); Rybicki v. State Board of Elections, 574 F. Supp. 1082, 1109 (N.D. Ill. 1982) (three-judge court). It is clear that the county in devising the proposed plan impermissibly gave greater weight to protecting the electoral opportunity of a white incumbent than it did to complying with Section 5's mandate to avoid retrogression of minority voting strength. See Beer v. United States, 425 U.S. 130 (1976).

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. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed redistricting plan.

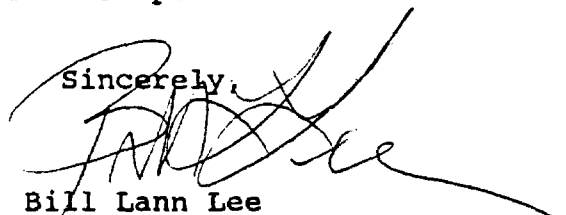
We note that under Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed redistricting plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

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Because the change to a five-member commission is directly related to the proposed redistricting plan and cannot be implemented absent a precleared plan, the Attorney General will make no determination with regard to the reduction in size of the county commission. See 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Tallapoosa County plans to take concerning this matter. If you have any questions, you should call Thomas A. Reed (202-514-5682), an attorney in the Voting Section. Refer to File No. 97-1021 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Lann Lee", is written over the word "Sincerely," and extends across the typed name and title.

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

August 16, 2000

J. Frank Head, Esq.
Wallace, Ellis, Fowler & Head
P.O. Box 587
Columbiana, Alabama 35051

Dear Mr. Head:

This refers to 42 annexations (adopted between March 19, 1992, and March 16, 2000) and their designation to council wards of the City of Alabaster in Shelby County, Alabama, submitted pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your partial responses to our July 10, 2000, request for additional information on numerous dates between July 13 and August 16, 2000.

We have considered carefully the information you have provided, as well as Census data, and comments and information from other interested parties. As discussed later in this letter, the City of Alabaster has not yet provided a complete response to our request for additional information, and has provided information which the city subsequently has acknowledged to be inaccurate. Under these circumstances, the Attorney General would normally postpone a decision on the merits of your submission until the city has responded fully and accurately to our July 10, 2000, letter. However, the city has asked us to issue a substantive Section 5 determination regarding the submitted changes based on the current incomplete record because of the city's fast approaching August 22, 2000, election.

The Attorney General does not interpose any objection to 40 annexations designated to majority white wards adopted between March 1992 and March 2000, nor to annexation Ordinances 94-338 and 96-410. Additionally, the Attorney General does not object to the designation of 40 annexations to Council Wards 5, 6,

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and 7. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection to these changes comes to our attention during the remainder of the sixty-day review period. See 28 C.F.R. 51.41 and 51.43.

However, we cannot reach the same conclusion with respect to the designation of the annexations in Ordinance Nos. 94-338 and 96-410 (hereafter referred to as the "Ward 1 annexations"). According to the 1990 Census and figures provided by the city at the time of its 1991 redistricting submission, minority residents constitute 11.0 percent of the city's population and 68.2 percent of Ward 1.

It is difficult to assess with precision the current population of the city within the existing wards. The city has provided incomplete and inconsistent data and inaccurate maps in response to our July 10, 2000, request for additional information. Each map provided by the city has subsequently been represented to contain several mistakes. Moreover, the demographic statistics provided are out of date given the city's growth in the decade and it is unclear to which precise boundaries the statistics relate. While the 2000 Census data will provide a clearer picture of the current demographics in the city, we are only able to utilize the data provided to make population estimates. The city has acknowledged that it has had exponential growth, yet has provided no response to our request for information to quantify or assess this growth.

You provided an estimate that there are 155 housing units in the proposed Ward 1 annexations. The city secretary has provided data showing that the Ward 1 annexations would add 179 white registered voters and two black registered voters, thereby decreasing the minority percentage of registered voters in this ward from 51.2 to 45.7 percent. This significant decrease in the minority voter percentage in Ward 1 appears retrogressive.

In 1975, the Attorney General found "a pattern of racial bloc voting [to be present] in city elections" in Alabaster when he objected to annexations which diluted minority voting strength under the city's then at-large election system. In our July 10, 2000, letter, we asked the city to provide state, county, school district, and municipal election returns, and related voter registration information in order to assess whether elections in Alabaster continue to be characterized by racially polarized voting. As of this time, we have not received

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all of the requested election returns or complete voter registration data, although you informed us on August 15, 2000, that we would be receiving them shortly. As a result, a current racial bloc voting analysis could not be completed at this time as we have not had the opportunity to review and analyze the documents. Based on our review of the records submitted, we have no basis to believe that racial bloc voting does not continue to exist in the city. Therefore, it appears that the retrogression caused by the proposed Ward 1 annexations would seriously threaten, if not eliminate, the only opportunity minority voters currently have to elect candidates of their choice to city office.

Where an annexation significantly decreases minority voting strength, the reasons for the annexations must be objectively verifiable, and legitimate, and the post-annexation election system must fairly reflect the post-annexation voting strength of the minority community. City of Richmond v. United States, 422 U.S. 358 at 371-373 (1975). Here, the designation of these annexations to Ward 1 is likely to result in the elimination of representation for a minority community which the submitted data suggest comprises 9 to 10 percent of the expanded city. Thus, the city has not carried its burden of showing that the post-annexation system will fairly reflect the post-annexation strength of the minority community.

Our analysis indicates that there were options available to and considered by the city which would have avoided the retrogressive effects of the proposed Ward 1 annexations, such as a limited redistricting that would make the annexations contiguous to and a part of Wards 2 or 6. We understand that these options had been under discussion among city council members since at least June 2000, and that concerns about the potential retrogressive impact of the proposed Ward 1 annexations had been discussed in the city council as early as 1996.

The city has proffered few reasons for its refusal to ameliorate the retrogressive impact of the proposed Ward 1 annexations, asserting that Ward 1 has a lower population than other wards and that the annexations therefore should be designated to that ward. Yet we understand that the city had recently considered a limited redistricting, which would link these annexations to Ward 6, a ward with fewer registered voters than Ward 1. The city also asserts that these annexations were designated to Ward 1 because they were not directly contiguous to any other wards. However, the city's consideration and rejection of alternatives to this designation in order to cure this retrogression demonstrates that the city did not consider its options limited by the location of the annexations.

The city asserts that this land was vacant when annexed and therefore could not have had any negative impact on minority voting strength and is therefore unobjectionable. The law is

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clear, however, that the effect of an annexation is to be determined by the most currently available population data when an annexation is submitted for preclearance. City of Rome v. United States, 446 U.S. 156, 186 (1979); 28 C.F.R. 51.54(b)(2). Here, the city waited several years before it sought preclearance of the Ward 1 annexations. Additionally, it was clear that the city was aware at the time of the annexations that they were slated for significant residential development in the near future with homes that were beyond the financial means of minorities in the area.

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. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I am unable at this time to conclude that the City of Alabaster has carried its burden of showing that the designation of Ward 1 annexations has neither a discriminatory purpose nor a discriminatory effect. Therefore, on behalf of the Attorney General, I must object to the designation of the annexations (Ordinance Nos. 94-338 and 96-410) to Ward 1. We will continue our review of the information most recently submitted to assess whether this information would affect our determination and we will notify you of the results of this review as soon as possible.

We note under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has 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. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objection by the Attorney General remains in effect and the designation of Ordinance Nos. 94-338 and 96-410 to Council Ward 1 continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10, 51.11, 51.45, and 51.48(c) and (d). Therefore, residents of the areas annexed by Ordinance Nos. 94-338 and 96-410 may vote for the mayoral position in the upcoming election but may not vote in the Ward 1 city council race.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Alabaster plans to take concerning this matter. If you have any

-5-

questions, you should call Judybeth Greene (202-616-2350), an attorney in the Voting Section. Please refer to File No. 2000-2230 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Bill Lann Lee SJ

Bill Lann Lee
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Mr. Troy King
Attorney General

JAN - 8 2007

Mr. John J. Park, Jr.
Assistant Attorney General
State of Alabama
Alabama State House
11 South Union Street
Montgomery, Alabama 36130

Dear Messrs. King and Park:

This letter refers to the change in method of selection for filling vacancies on the Mobile County Commission from special election to gubernatorial appointment in Mobile County, Alabama, pursuant to decisions of the Alabama Supreme Court in *Stokes v. Noonan*, 534 So. 2d 237 (Ala. 1988), and *Riley v. Kennedy*, 928 So. 2d 1013 (Ala. 2005), submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, as amended. This matter arises from an order entered on August 18, 2006, by a three-judge panel in *Kennedy v. Riley*, 445 F. Supp. 2d 1333 (M.D. Ala. 2006), ruling that the State of Alabama submit the two decisions for preclearance under Section 5. We received your submission on November 9, 2006.

We have carefully considered the information you have provided, as well as census data, comments, and information from other interested parties. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing 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. *Georgia v. United States*, 411 U.S. 526 (1973). *See also* Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. § 51.52. "A change affecting voting is considered to have a discriminatory effect under Section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (*i.e.*, will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively." 28 C.F.R. § 51.54(a) (citing *Beer v. United States*, 425 U.S. 130, 140-42 (1976)).

Pursuant to Act No. 85-237, a vacancy on the Mobile County Commission is to be filled through popular election by the voters within the relevant single-member district. That statute was precleared by the Attorney General under Section 5 on June 17, 1985 (File No. 1985-1645),

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and was first implemented in a 1987 District 1 special election. Pursuant to decision of the Alabama Supreme Court in *Stokes v. Noonan*, that method of filling vacancies was changed from election by the voters of the district to appointment by the Governor of Alabama in 1988, and reaffirmed by *Riley v. Kennedy* in 2005.

Pursuant to the decision of the three-judge federal panel in *Kennedy v. Riley*, the State has submitted the changes effected by *Stokes v. Noonan* and *Riley v. Kennedy* for review under Section 5 of the Voting Rights Act. Additionally, we understand that Alabama law has changed, legislatively reversing the decision in these cases and restoring the authority to fill vacancies to the voters themselves for future elections. This is the effect of Act No. 2006-342, which was signed by the Governor on April 12, 2006, and which would govern all future vacancies. The question before us, therefore, is limited to whether the change effected by *Stokes v. Noonan* and *Riley v. Kennedy* will lead to impermissible retrogression, caused by the appointment, rather than election, of an individual to fill a vacancy on the Mobile County Commission for a term expiring in 2008.

In evaluating whether a change affecting voting will lead to impermissible retrogression, the Attorney General compares the submitted change to the practice or procedure in effect at the time of the submission. 28 C.F.R. § 51.54(a). In light of your submission, we note that a change brought about by a state court decision is subject to Section 5. *Branch v. Smith*, 538 U.S. 254, 262 (2003). A practice or procedure that is not legally enforceable under Section 5 cannot serve as a benchmark; the comparison is with the last legally enforceable practice or procedure used by the jurisdiction. *Id.* Changes that are not precleared are not enforceable. 42 U.S.C. § 1973c; *Hathorn v. Lovorn*, 457 U.S. 255, 269 (1982); *Clark v. Roemer*, 500 U.S. 646, 652 (1991). Because the changes pursuant to *Stokes* and *Riley* were never precleared, they cannot serve as the benchmark. *See Kennedy*, 445 F. Supp. 2d at 1336, (citing *Abrams v. Johnson*, 521 U.S. 74, 96-97 (1997)); *Gresham v. Harris*, 695 F.Supp. 1179, 1183 (N.D. Ga. 1988) (three-judge court), *aff'd sub nom. Poole v. Gresham*, 495 U.S. 954 (1990). The benchmark is determined without regard to its legality under state law. *Kennedy*, 445 F. Supp. 2d at 1336 (citing *City of Lockhart v. United States*, 460 U.S. 125, 132-133 (1983)); *Perkins v. Matthews*, 400 U.S. 379, 394-95 (1971).

Thus, the last precleared procedure for filling vacancies in the Mobile County Commission that was in force or effect was the special election method set forth in Act No. 85-237. *Kennedy*, 445 F. Supp. 2d at 1336. This Act remains in full force and effect, as it affects voting, was precleared, and was implemented in the 1987 special election cycle. *See Young v. Fordice*, 520 U.S. 273, 282-83 (1997); *Lockhart*, 460 U.S. at 132-33. It is therefore the benchmark against which we measure the proposed change to fill vacancies by appointment of the Governor of Alabama.

The measurement is straightforward. As a result of litigation under the Voting Rights Act, Mobile County is governed by the three-member Mobile County Commission, the members of which are elected from single-member districts. *Brown v. Moore*, Civ. Act. No. 75-298-P

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(S.D. Ala. 1976) (unpublished opinion). One of the single-member districts, District 1, is over sixty-three percent African-American in population and registered voters. The African-American voters of District 1 enjoy the opportunity to elect minority candidates of their choice to the County Commission; indeed, they enjoyed it in the 1987 special election in which Act 85-237 was first implemented. There is no dispute that the change would transfer this electoral power to a state official elected by a statewide constituency whose racial make-up and electoral choices regularly differ from those of the voters of District 1. Attorneys General have on at least ten occasions previously interposed objections to changes in method of selection from election to appointment in Alabama and elsewhere. For instance, in 1971, the Attorney General objected to Act No. 2445 of the Alabama Legislature, which changed the method of selection of judges of Justice of the Peace Courts in Alabama from election to appointment. Letter of David L. Norman, Assistant Attorney General, Civil Rights Division, to Hon. William J. Baxley, Attorney General, State of Alabama, Dec. 26, 1973.

The transfer of electoral power effected by *Stokes v. Noonan* and *Riley v. Kennedy* appears to diminish the opportunity of minority voters to elect a representative of their choice to the Mobile County Commission. We have received no indication that the voters of District 1 would have selected the particular individual selected by the Governor. Under these circumstances, the State has failed to carry its burden of proof that the change is not retrogressive. On behalf of the Attorney General, therefore, I must interpose an objection to the change in method of selection for vacancies occurring on the Mobile County Commission from special election to gubernatorial appointment.

We note that under Section 5, you have the right to seek a declaratory judgment 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 language minority group. See 28 C.F.R. § 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. § 51.45. However, until the objection is withdrawn or a judgment from the United States District Court for the District of Columbia is obtained, the method of selection for vacancies on the Mobile County Commission by gubernatorial appointment will continue to be legally unenforceable as a matter of federal law. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. § 51.10.

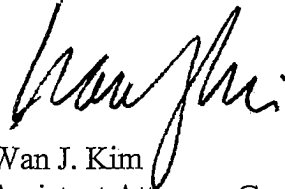
We also have been advised, as suggested above, that the State has, in essence, re-enacted the provisions of Act No. 85-237 in Act No. 2006-342, which similarly provides that future vacancies on the Mobile County Commission will be filled by special election. To the extent that Act No. 2006-342 does not change the voting practices and procedures set forth in Act No. 85-237, it need not be submitted for Section 5 review. We respectfully request your advice as to whether changes covered by Section 5 are contained in the 2006 law. In the meantime, special elections may be held pursuant to Act No. 85-237.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Alabama plans to take concerning this matter. If you have any

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questions, please call Robert Lowell (202-514-3539), an attorney in the Voting Section. Because this matter has been the subject of pending litigation in *Kennedy v. Riley*, we are serving copies of this letter by facsimile transmission to the Court and counsel of record.

Sincerely,

A handwritten signature in black ink, appearing to read "Wan J. Kim". The signature is fluid and cursive, with the first name "Wan" and last name "Kim" clearly distinguishable.

Wan J. Kim
Assistant Attorney General



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 25, 2008

Dan Head, Esq.
Wallace, Ellis, Fowler & Head
P.O. Box 587
Columbiana, Alabama 35051

Dear Mr. Head:

This refers to 177 annexations, their designations to districts, and the 2008 redistricting plan for the City of Calera in Shelby County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our May 7, 2008, request for additional information on June 24, 2008; additional information was received through August 18, 2008.

According to the 2000 Census, the City of Calera has a total population of 3,158 persons, of whom 628 (19.9%) were identified as African American. We understand that the city has experienced sizeable growth since that time, due primarily to residential development on the 177 annexations now under review. The city has provided estimates that its population is at 10,806 persons as of December 2006, of whom 20 percent are identified as African American.

The submitted annexations and redistricting plan would eliminate the city's sole majority African-American district. This district and the single-member district method of election were adopted pursuant to a consent decree approved 18 years ago by the court in Dillard v. City of Calera, Civil Action No. 2:87cv1167-MHT. Under this arrangement, the district has elected an African-American candidate for the last 20 years.

We have carefully considered the information you have provided, as well as information and materials from other interested parties. Under Section 5 of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Public Law 109-246, 120 Stat. 577 (2006) ("Voting Rights Act"), the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See also Georgia v. Ashcroft, 123 U.S. 2498 (2003); Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52 (c). As discussed further below, I cannot conclude that the city has sustained its burden of showing that the proposed change does not have a discriminatory purpose or effect. Therefore, based on the information available to us, I object to the voting changes on behalf of the Attorney General.

The United States Supreme Court has held that where annexations decrease minority voting strength, the reasons for the annexations must be objectively verifiable and legitimate,

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and the post-annexation election system must fairly reflect the post-annexation voting strength of the minority community in the expanded city. City of Richmond v. United States, 422 U.S. 358, 370-3 (1975); see also, City of Pleasant Grove v. United States, 479 U.S. 462 (1987); City of Port Arthur v. United States, 459 U.S. 159 (1982); City of Rome v. United States, 446 U.S. 156 (1980).

For 13 years, the city has failed to submit their adopted annexations for Section 5 review. Our Department has not received an annexation submission from the city since 1993, and the city admits that it is at fault for not submitting the 177 annexations. The only submission in the last 13 years was a proposed redistricting plan based on the 2000 Census which included no mention of the missing annexations.

In a similar situation, the United States Supreme Court in City of Rome v. United States, 446 U.S. at 186, made it clear that the current population of the annexations needs to be included for Section 5 review:

Because Rome's failure to preclear any of these annexations caused a delay in federal review and placed the annexations before the District Court as a group, the court was correct in concluding that the cumulative effect of the 13 annexations must be examined from the perspective of the most current available population data.

The Supreme Court found that the City of Rome failed to provide the necessary information about total population, voting age population, and a racial composition for each. *Id.* Likewise, the City of Calera also has failed to provide any reliable current population information about the 177 annexations here.

The demographic data provided by the city regarding total population and voting age population in the city as a whole is also unreliable. Beginning with total population, the city used certificate of occupancy data to estimate total population in December 2006 of 10,806. The city arrived at this number by decreasing the persons per household multiplier of 2.3 significantly from the 2000 Census without explanation. Had the city used the 2000 Census number, the population estimate would have been approximately 12,000 persons. The United States Census Bureau estimated the population in July 2006 at 8,329 and in July 2007 at 9,398. The city has not explained why its population estimate is substantially higher than the Census estimate. Likewise, the city fails to provide reliable voting age population.

The estimate of racial composition in the city has no basis. The city has claimed that the population is 20 percent black throughout the newly annexed areas, but no attempt has been made to determine their composition. Simply because black population in the city was 20 percent of the population in 2000, does not mean that would be the percentage of black population in the newly annexed areas. In fact, both city-wide voter registration and school data in recent years appear to show growth in the black population. In failing to provide adequate numbers to evaluate the annexations and concomitant redistricting plan, the city fails to meet its burden of proof.

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The City of Calera also appears to have failed to consider how the African-American population would be fairly reflected in the post-annexation election system moving forward. In March 2007, three months prior to the adoption of the proposed redistricting plan, the State of Alabama and plaintiffs filed a Joint Motion to Show Cause asking why the case should not be dismissed. In that order to show cause, they stated that the Alabama legislature in Act No. 2006-252 provide that the Calera City Council can increase the size of the city council under the single-member district method of election by general or local law in the future. The court dissolved the consent decree on May 9, 2007. According to the geographer hired by the city, he was willing to provide information for the city to consider alternative methods of election that would have provided black voters a better opportunity to elect a candidate of choice, but the city council expressed no interest in these alternatives.

We note that under Section 5 you have the right to seek a declaratory judgment 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 language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District Court for the District of Columbia is obtained, the annexations and concomitant redistricting plan will continue 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 City of Calera plans to take concerning this matter. If you have any questions, you should call Eric Rich (202-305-0107), an attorney in the Voting Section.

Sincerely,



Grace Chung Becker
Acting Assistant Attorney General