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DJ 166-012-3
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JUL 31 1978

Honorable A. F. Summer
Attorney General of the
State of Mississippi
Department of Justice
Jackson, Mississippi 39205

Dear Mr. Attorney General:

This is in reference to the reapportionment of the Mississippi Senate and House of Representatives, S.B. 3098 and H.B. 1491, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on June 1, 1978.

This is also in further reference to your letter of July 26, 1978, to the Attorney General concerning this submission and our response thereto of July 28, 1978.

In your July 26 letter you requested that the time for the Attorney General to respond to your submission be extended 10 days, until August 10, 1978, to allow you an opportunity to confer with the Attorney General and present supplemental information in support of your submission. On July 28, 1978, we responded by explaining that while we have no authority under our procedural guidelines to waive the 60-day period we would normally have upon the presentation of additional information, we were aware of the time factors involved and would make every effort to make a final decision within ten days of our receipt of that information. According to your conversation of July 31, 1978, you did not consider this response acceptable. We therefore find it necessary to respond today to your submission since this is the 60th day.

We should note at the outset that the burden of proof under Section 5 is on the submitting authority. See South Carolina v. Katzenbach, 383 U.S. 301 (1966); United States v. Georgia, 411 U.S. 526 (1973); 28 C.F.R. 51.19. Thus if the Attorney General is not satisfied both that the purpose of the submitted redistricting plans and their effect is not racially discriminatory an objection under Section 5 is required.

Our analysis of the submitted plans, in addition, must be made in the context of the history of racial discrimination in the State of Mississippi and of the present status of blacks in the State of Mississippi. Blacks in Mississippi have been the victims of decades of discrimination in the political process and in other areas; the effect of that discrimination, and in some instances the discrimination itself, continues. Substantial evidence exists that whites rarely vote for black candidates or candidates positively supported by blacks and that the vote of blacks is rarely decisive in an electoral contest between white candidates. In addition, available evidence indicates that the Mississippi legislature has not been responsive to the needs of blacks.

With respect to the analysis of the submitted plans, statistical data show that because the State's black population is generally younger than its white population a black majority in a legislative district does not imply a black majority in voting age population in such a district. Furthermore, because of the effects of discrimination and because of the low socio-economic status of blacks in Mississippi compared to whites (itself in part the result of discrimination), the registration and voting rates among blacks are lower than such rates among whites. Finally, demographic changes since the 1970 census render less reliable any conclusion that a particular district has in fact the black population percentage that the available statistics suggest. As a result, caution must be used in the analysis under Section 5 of the submitted plans. The political influence of blacks in a district cannot be predicted from population statistics alone.

Against this background, we have been unable to conclude that the submitted plans for the Mississippi Senate and House of Representatives do not have the purpose or effect of abridging the right to vote because of race or color. A number of factors have led us to this conclusion.

First, the information presented to us concerning the criteria that were established for the plans and the methodology followed does not indicate the presence of any safeguards to prevent discrimination in the preparation of the plans.

Second, we have received no information explaining why these particular plans were adopted rather than other available plans that appear to provide a greater opportunity for black representation.

Third, we have received unrebutted information indicating that one purpose of the adopted plans was to preserve the seats of incumbent legislators. In this regard we note that none of the State's 52 senators and only 4 of the 122 representatives are blacks.

Fourth, the information available to us indicates that blacks and their representatives had at best a limited opportunity to influence the formulation of the submitted plans.

Fifth, we have received no evidence indicating support among blacks for the submitted plans.

Sixth, the configuration of Senate and House districts in a number of areas suggests a purpose to minimize black influence. This is suggested, for example, by the treatment of Holmes and Humphreys Counties, the City of Greenville, Hinds County, and Copiah County in the Senate plan and by the treatment of Marshall County, the counties in Districts 9, 10, and 11, the Cities of Greenville, Greenwood, and Vicksburg, Hinds County, and Adams County in the House plan.

Accordingly, on the basis of the information we have I must, on behalf of the Attorney General, interpose an objection to the implementation of the reapportionment of the Mississippi State Senate and House of Representatives, set forth in S.B. 3098 and H.B. 1491.

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 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 Court obtained, the effect of the objection by the Attorney General is to make the redistricting plans legally unenforceable.

Sincerely,

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division