JUN 11 1979

DJ 166-012-3
C2379

Honorable A. F. Summer
Attorney General
State of Mississippi
Jackson, Mississippi 39105

Dear Mr. Attorney General:

This is in reference to the Mississippi "Open Primary" law, Senate Bill No. 2802 (Chapter 432), Laws of Mississippi of 1979, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on April 12, 1979, and while we have noted your request for expedited consideration we have been unable to respond until this time.

Senate Bill 2802 provides a new system for the nomination and election of elected officials in the State of Mississippi. Under the existing system, political parties nominate candidates by means of a primary and (if no candidate receives a majority of the votes) a run-off primary. The general election includes party nominees and candidates qualifying as independents and, as a general rule, the candidate receiving the most votes is declared the winner.

Under the proposed system, as we understand it, all candidates would run together in a "preferential" election. A candidate affiliated with a political party may have the name of that party listed next to his name, but nominations by political parties would not be indicated on the ballot and there would be no limit on the number of candidates affiliated with the same party who could be candidates for the same position.

The names of the two candidates receiving the most votes for each position would be listed on the "general" election ballot (unless a candidate received a majority of the votes in the preferential election, in which case only that candidate's name would appear on the general election ballot). In the general election, the candidate receiving the most votes, which is necessarily a majority since only two candidates are involved, would be declared the winner. In addition, Senate Bill 2802 repeals all statutory provisions with respect to partisan primary elections and makes other ancillary adjustments in Mississippi election law.

We have considered carefully the information presented by you and obtained from other sources in connection with this submission. Our analysis reveals that, for purposes of Section 5 evaluation, Senate Bill 2802 is identical to House Bills 362 and 363 (1970 Regular Session), to which an objection pursuant to Section 5 was interposed on April 26, 1974, and to House Bill 114 (1976 Regular Session), to which an objection was interposed on August 23, 1976, and reaffirmed on January 25, 1977. In other words, our analysis shows that, like its predecessors, Senate Bill 2802 eliminates or substantially reduces the role of political parties in the electoral system of the State of Mississippi and introduces a majority vote requirement in the general election, where a plurality of the votes previously has been sufficient.

Under Section 5 an objection is required if the modifications of the electoral system of the State of Mississippi made by Senate Bill 2802 would "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 (1970). On the basis of a thorough study of the information you have provided, information previously before us from prior submissions of the referenced similar legislation, court decisions with respect to the status of blacks in the electoral system of the State of Mississippi, and the views of other interested parties,

we are unable to conclude now, as we were in the past, that the changes wrought by Senate Bill 2802 will not lead to such a retrogression. Nor can we conclude that such a retrogression was not intended.

The information provided in your submission and an analysis of recent elections show the important role that blacks have acquired in the Democratic Party in Mississippi. The elimination of the present system of partisan primaries and party nominations will eliminate this political advantage that blacks have obtained. In addition, we note that during the hearings black leaders in the state consistently opposed this legislation, which was enacted despite this universal black opposition.

Our analysis also reveals the importance to blacks of the plurality-win system in the State of Mississippi. Our research shows, for example, that the situation in Mississippi is not distinguishable from that in Rome, Georgia, where the court, in a declaratory judgment action brought under Section 5, found that the majority vote requirement was retrogressive in effect. City of Rome v. United States, C.A. No. 77-0797 (D.D.C. April 9, 1979):

> With respect to the majority vote and runoff election provisions, the discriminatory effect is clear beyond peradventure. Under the plurality-win system, a black candidate in Rome would stand a good chance of election if white citizens split their votes among numerous candidates and the black voters engaged in "single-shot" voting, i.e., voted

> only for the candidate or candidates of their choice. Under the majority vote/runoff election scheme, however, the black candidate, even if he gained a plurality of votes in the general election, would still have to face the runner-up white candidate in a head-to-head runoff election in which, given bloc voting by race and a white majority, the black candidate would be at a severe disadvantage. (Emphasis added. Slip opinion, pp. 54-55).

In State of Mississippi v. United States, a Section 5 declaratory judgment action involving the reapportionment of the Mississippi legislature, the District Court for the District of Columbia very recently found racial bloc voting to be a fact in Mississippi politics. (Slip opinion, p. 10). More specifically, in relation to the instant submission, the court there, in granting the declaratory judgment sought by Mississippi, took particular note of the opportunity afforded under the existing electoral system for persons to run as independents and win with a plurality. (Slip opinion, p. 9).

Under these circumstances, I cannot conclude, any more than could my predecessors, that the changes here sought to be accomplished do not have the purpose and will not have the effect of discriminating on the basis of race or color. Accordingly, on behalf of the Attorney General, I must interpose an objection to the electoral system provided by Senate Bill 2802 insofar as it seeks to effectuate a nonpartisan electoral system and the imposition of a majority vote requirement for general elections.

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,

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 is obtained, the effect of the objection by the Attorney General is to make Senate Bill 2802 legally unenforceable. If you have any questions about this letter, please do not hesitate to contact us.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division