V5967

FEB 14 1974

Honorable Daniel R. McLeod
Attorney General
State of South Carolina
Columbia, South Carolina 29211

Dear Mr. Attorney General:

This is in reference to your submission to the Attorney General under Section 5 of the Voting Rights Act of 1965 of the Act to Reapportion the House of Representatives, approved by Governor West October 26, 1973. Your submission was completed December 18, 1973.

We have considered the submitted plan and supporting information as well as data compiled by the Census Bureau and information and comments from interested parties. On the basis of the information available to us we are unable to conclude that this Act does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race. On behalf of the Attorney General I must, therefore, interpose an objection to the implementation of this Act.

Our objection is based upon two aspects of this plan - the submergence of significant concentrations of Negro voters into large majority-white multi-member districts and the magnification of this dilution of Negro voting strength by the numbered post and majority vote requirement. Our objection, therefore, extends to the entire plan insofar as it incorporates those features.

cc: Public File (Rm.920)

We have previously reviewed with you the various legal precedents which obtain in multi-member district, numbered posts, and majority runoff situations. The most recent cases are Zimmer v. McKeithen, No. 71-2649 (5th Cir. Sept. 12, 1973) (en banc), and Turner v. McKeithen, No. 71-2221 (5th Cir. Dec. 28, 1973). These two cases are but the latest in a series of cases which have made it clear that at-large elections are discriminatory where there is a history of discrimination against a minority race and the discrimination has had some residual effect on members of the minority race or has had the effect of shaping people's attitudes so that race is a factor in politics. White v. Regester, 412 U.S. 755 (1973), aff'g Graves v. Barnes, 343 F.Supp. 704 (W.D. Texas 1972); City of Petersburg v. United States, 354 F.Supp. 1021 (D.D.C. 1972), aff'd, 410 U.S. 962 (1973); Sims v. Amos, 336 F.Supp. 924 (M.D. Ala. 1972), aff'd, 409 U.S. 942 (1972); Bussie v. Governor of Louisiana, 333 F.Supp. 452 (E.D. La. 1971), aff'd as to invalidity of multi-member districts, 457 F.2d 796 (5th Cir. 1971); Georgia v. United States, 411 U.S. 526 (1973); Taylor v. McKeithen, 407 U.S. 191 (1972). The racially discriminatory effect of the numbered post system has been recognized in White v. Regester, supra; Dunston v. Scott, 336 F.Supp. 206 (D. N.C. 1972); and Sims v. Amos, supra.

We have reached our conclusion reluctantly because we understand fully the complexities involved in designing a reapportionment plan which meets the needs of the state and its citizens and, at the same time, complies with the mandates of the Federal Constitution and laws. I also am not unmindful of the efforts made by the legislature, through the county combinations employed in establishing the districts, to minimize to the extent possible the dilution occasioned under the multi-member system. However, our analysis shows that in spite of these efforts the racially discriminatory effects of the system prevail and we are persuaded, therefore, that the Voting Rights Act requires this result.

Nor do we believe the Supreme Court's opinion in Mahan v. Howell, 410 U.S. 315 (1973), cited in the submission papers, requires or supports a different conclusion. In that case the Court simply upheld as not being violative of the one person - one vote principle of the equal protection requirement of the Fourteenth Amendment a 16% variance among districts in a state legislative reapportionment plan, the size of the variance having been occasioned by the state's effort to preserve its county lines. Nothing in the opinion suggests that adherence to county lines in such a reapportionment would be similarly tolerated where, as here, such adherance would have the necessary effect of diluting black voting strength in a manner rejected by the above cited authorities.

Of course, Section 5 permits you to seek a declaratory judgment from the 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. Until such a judgment is rendered by that court, however, the legal effect of the objection of the Attorney General is to render unenforceable this reapportionment plan.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division