Washington, D.C. 20530

FEB 14 1975

Mr. Morris D. Rosen
Corporation Counsel
P. O. Box 27
45 Broad Street
Charleston, South Carolina 29402

Dear Mr. Rosen:

This is in reference to your submission under Section 5 of the Voting Rights Act of plans for redistricting the City of Charleston, South Carolina. Your submission was received on December 19, 1974.

Section 5 of the Voting Rights Act provides that whenever a state or political subdivision subject to its provisions "enact(s)" or "seek(s) to administer" a voting change, such as a redistricting, it must first obtain the necessary declaratory judgment in the District Court for the District of Columbia or administrative preclearance through submission to the Attorney General. Thus, the role of the Attorney General in such a situation is to review and analyze changes which have been officially adopted by the jurisdiction involved to determine if the proscribed purpose or effect is present and, accordingly, to make a determination whether to object to the implementation of the change. We feel some responsibility to make these comments since it has come to our attention during the course of our reviewing this submission that some may have the mistaken view that proposals from other interested parties may be "adopted," "approved" or "accepted" by the Attorney

General in lieu of the submitted plans. While, as in this instance, we find information concerning alternative proposals valuable and sometimes indispensable to our evaluation of the formally submitted plan, the Attorney General has no authority under Section 5 to require or order the adoption of any particular plan of redistricting but merely the power to object or not object to the implementation of a plan after it is adopted by the state, county or city involved.

With those thoughts in mind we turn to a consideration of the four plans submitted by the City. As you requested, we have reviewed the plans in order of the City's preference as indicated in your letter of submission. We have examined these four plans carefully, in the context of the supporting materials you furnished, information and comments received from other interested parties, including alternative redistricting proposals sent to us, and relevant Census data and information contained in our files relating to other recent submissions from the City of Charleston. On the basis of our examination, we are unable to conclude that the implementation of either plan #1, plan #2 or plan #3 will not have a racially discriminatory effect since, under recent judicial decisions, we believe that the at-large feature of all three of these plans has the potential of unnecessarily diluting the black voting strength in the City of Charleston. See, e.g., White v. Regester, 412 U.S. 755 (1973); Georgia v. United States, 411 U.S. 526 (1972); Turner v. McKeithen, 490 F.2d 191 (5th Cir. 1973); Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973); Beer v. United States, 374 F. Supp. 363 (D.D.C. 1974). Cf. Chapman v. Meir, _____ U.S. _____ (1975), 43 U.S.L.W. 4199.

Our analysis shows that the City of Charleston is approximately 44% black. Plan #1 of the City's submission provides for the election of 12 council members through the use of three dual-member districts, at-large elections for 6 of the 12 members, and residency requirements. Under that plan the three districts would have black population percentages of 88.4%, 39.7% and 1.6%. Thus, plan #1 would assure blacks the opportunity for electing only 2 of 12 council members - from the 88% black district. In addition to the 4 members the election of whom would be controlled by predominantly white district electorates, the 6 at-large members would be controlled by the majority-white city-wide electorate. In the context of Charleston, with its history of racial bloc voting and a 44% black population, we cannot conclude that the 16.6% representation for blacks built into plan #1 is not dilutive of black voting strength, particularly when readily available alternatives would not result in such a substantial variance from the black proportion of the population.

Plan #2, like plan #1, provides for three dual-member districts and at-large election of 6 members, with residency, for a total of 12 members. Under plan #2 the three districts would have black populations of 70.5%, 57.5% and 1.6%. In spite of the somewhat small majority in the 57.5% district, the plan's chief exponent indicates that more than 56% of the registered voters in that district would be black. Thus, it would appear that under plan #2 blacks would have substantial opportunity for electing 4 of 12 council members - two each from the 70% and 57% districts. While plan #2, which was proposed and is espoused by a member of the black community, approaches meaningful representation for blacks more closely than does plan #1, like plan #1 it does not appear comparable

to readily available alternatives such as single-member district plans, including the City's alternative plan #4, in terms of measurable opportunity for black representation. Accordingly, we cannot conclude that the plan will not have a racially discriminatory effect given the 33% representation it assures to the 44% black population.

Plan #3 provides for the election of 15 council members, 12 of whom would be elected from single-member districts and 3 of whom would be elected at-large with residency requirements. Five of the 12 single-member districts would have black majorities, thus affording blacks the opportunity for electing 5 of 15 council members. Aside from the 7 council members who would be elected from majority white districts the election of the three at-large members also would be controlled by the majority-white city-wide electorate, with the result that the 44% black population in the City would control only 33% of the council. Under such circumstances, we cannot conclude that plan #3, in the context of Charleston, will not have a racially discriminatory effect.

For the foregoing reasons, I must, on behalf of the Attorney General, interpose an objection to plans #1, #2 and #3.

However, with respect to plan #4, which provides for the election of 12 council members from single-member districts, we do not reach the same conclusion. Five of the 12 districts have substantial black majorities thus assuring to blacks the opportunity to elect 5 of the 12 members or 41.6% of the council. While other proposals by third parties have been brought to our attention which exhibit percentages more favorable to blacks (one would have 50-50 black-white representation on the council), such proposals suggest efforts to

maximize black voting strength, a concept which, in our view is not supported by either the Fifteenth Amendment or the Voting Rights Act under the circumstances existent here. Consequently, the Attorney General does not interpose an objection to submitted plan #4.

In connection with the Attorney General's failure to object to plan #4, you will recall that the redistricting proposal embodied in that plan, along with another, previously was presented to us by you and the Mayor with a request that we give you our informal views as to its merits relative to Section 5. In commenting on this proposal we advised you in our letter of December 5, 1974, that "while we have detected, . . . , no obvious Fifteenth Amendment difficulties in either plan, the plan which is based on combining precincts (plan #4) may raise other problems regarding Fourteenth Amendment considerations." Since we note that the plan as adopted by the City and submitted for formal review is unaltered and still contains a total deviation of 23.6% among its districts, I would like to emphasize that the Attorney General's failure to object here relates only to the Fifteenth Amendment issues involved and in no way addresses itself to Fourteenth Amendment one person-one vote issues or any other questions which may have been raised during the course of pending litigation pertaining to the City's redistricting.

Finally, you will recall that upon interposing an objection to the implementation of several annexations to the City of Charleston I advised you in my letter of September 20, 1974, that should the City undertake to elect its councilmen from single-member districts the Attorney General would reconsider that objection. In view of our finding your single-member

district plan unobjectionable as far as Section 5 considerations are concerned, we are prepared to undertake a reconsideration of the annexation objection at such time as this or another acceptable single-member plan is approved by the court in your pending litigation. In that regard, I am taking the liberty of forwarding a copy of this letter to the court.

Sincerely,

J. Stanley Pottinger

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

cc: U.S. District Court for the
District of South Carolina

MAY 13 1975

Mr. Norris D. Rosen
Corporation Counsel
P. O. Box 527
45 Broad Street
Charleston, South Carolina 29402

Dear Mr. Rosen:

This is in reference to the proposed plan for reapportioning the City of Charleston, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on March 31, 1975. In accordance with your request, expedited consideration has been given to this submission pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. 51.22).

The Attorney General does not interpose any objection to the change 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 change.

You will recall that upon interposing an objection on behalf of the Attorney General to the implementation of several annexations to the City of Charleston I advised you in my letter of September 20, 1974, that should the City undertake to elect its

council from single-member districts the Attorney General would reconsider that objection. On December 19, 1974, such a plan was submitted and on February 18, 1975, while advising you that the Attorney General did not object to that plan under Section 5, I pointed out potential Fourteenth Amendment problems with the single-member plan then under consideration. Thus, my February 18 letter noted that "we are prepared to undertake a reconsideration of the annexation objection at such time as this or another acceptable single-member plan is approved by the court in your pending litigation."

It is our understanding that the District Court did not approve the single-member plan previously submitted to the Attorney General but did approve the plan presently under submission. In view of that fact and our finding that the instant plan is not objectionable, on behalf of the Attorney General I am withdrawing the objection to the seven annexations interposed on September 20, 1974.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

cc: U. S. District Court for the
District of South Carolina