NOV 12 1976

Ms. Treva G. Ashworth
Assistant Attorney General
State of South Carolina
Wade Hampton Office Building
Post Office Box 11549
Columbia, South Carolina 29211

Dear Ms. Ashworth:

This is in reference to South Carolina Act R546, 1976 Session, which provides for a change in the form of government for Horry County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was originally received on March 16, 1976. Additional information concerning this submission was received on July 8, 1976, and still further information, completing the submission, was received from J. Archie Lee, Chairman of the Horry County Democratic Party, on September 13, 1976.

Under Act R546 Horry County will have a 9 member county council, consisting of a chairman, separately elected, and 8 members, all elected at large for two year terms. Under Section 23-496 of the South Carolina Code of 1962, a majority vote is required in primary elections held to nominate candidates for these positions.

Section 5 of the Voting Rights Act requires the Attorney General to examine submitted changes that affect the voting process to determine that a change "does not have the purpose and will not have the effect of denying or abriding the right to vote on account of race or color." In making this determination on behalf of the Attorney General, we apply the legal principles developed by the courts in the same or analogous situations. Principal cases dealing with the proper approach to an evaluation of a method of election are White v. Regester, 412 U.S. 755 (1973), and Zimmer v. McKeithen, 485 F. 2d 1297 (5th Cir. 1973), aff'd on other grounds sub nom. East Carroll Parish School Board v. Marshall 44 U.S.L.W. 4435 (March 30, 1976).

In making our determination with respect to Act R546 we have carefully studied demographic data, voter registration data, and primary election returns for Horry County; we have also considered the views of minority residents of the county. Our research indicates the following facts: Blacks constitute about 25 percent of the population of the county. Blacks were not appointed to the county board of commissioners, have not been elected to the county board of education, have failed to receive the Democratic nomination for the new county council and have not been elected to the new county council. As indicated above, South Carolina law requires a majority vote in primary elections.

In the June 1976 first primary of the Democratic Party one black candidate was among the eight persons receiving the greatest number of votes and would have been one of that party's nominees but for the majority requirement. An analysis of precinct election returns for the June 1976 run-off primary reveals a pattern of racial bloc voting. For example, in two precincts (combined) having very few white voters, Race Path and Port Harrelson, the two black candidates received more votes than did any of the 14 candidates. In four precincts (combined) having very few black voters, West Conway, Surfside Beach, Red Hill, and Jordanville, the two black candidates received fewer votes than did any of the white candidates. Thus, the majority vote requirement in the context of the at-large election system emerges as a very significant factor in the setting of Horry County. Where, as here, a jurisdiction adopts a new elective system (replacing an appointive one) and existing state law compels an electoral practice such as the majority vote which, in the context of that jurisdiction, means that minorities will not have a fair opportunity to exercise their political power, in our view an objection is warranted. Under these circumstances and in the context of the pre-existing majority vote requirement we are unable to conclude, as we must under the Voting Rights Act, that the newly established at-large election system does not have the effect of abridging the right to vote on the basis of race or color. As a result, I must on the behalf of the Attorney General, interpose an objection.

Of course, 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 the implementation of Act R546 neither has the purpose not the effect of denying or abridging the right to vote on account of race or color. Until such judgment is rendered by the Court, however, the effect of the objection by the Attorney General is to render the change in question legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division