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JUN 14 1977

Mr. Ben Scott Whaley
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Attorneys at Law
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Charleston, South Carolina 29402

Dear Mr. Whaley:

This is in reference to the implementation of the South Carolina Home Rule Act by Charleston County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on April 15, 1977.

We have given careful consideration to the information furnished by you as well as Bureau of the Census data and information and comments from interested parties. Our analysis reveals that black persons represent 31% of the Charleston County population, and that under the proposed ordinance implementing Home Rule, council members would be elected through a combined use of multi-member residency districts and at-large elections. While this is, ostensibly, the same system of election used by the county in electing its present council, we note significant differences in that body as presently constituted and as it would exist under the Home Rule Act.

According to our information, the county council presently has limited taxing power but is under the control of the county legislative delegation insofar as legislation on major fiscal matters is concerned. Under "home rule", however, the council may create special taxing districts, tax different areas at different rates depending on services rendered, grant franchises, enact ordinances to enforce powers granted by the Home Rule Act, provide penalties for violation of such ordinances, and authorize appropriate action to enforce such ordinances. Thus, as we perceive it, even though the formal structure of the council remains the same, the changes resulting from compliance with the Home Rule Act significantly alter the council as the organ for the governance of the electorate and, accordingly, form the basis for evaluating the system under which the more responsible form of government ordained by the Home Rule Act is to be elected. That form of government requires at-large elections with residency districts.

Recent court decisions, to which we feel obligated to give great weight, have established that the use of at-large elections in situations where there is a cognizable racial minority and a history of voting along racial lines has the potential for impermissibly diluting minority voting strength. See White v. Regester, 412 U.S. 755 (1973); Turner v. McKeithen, 490 F.2d 191 (5th Cir. 1973); Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973), aff'd sub nom. East Carroll School Board v. Marshall, 424 U.S. 636 (1976). That blacks, with 31% of the population in Charleston County, constitute a cognizable minority group we believe is without question. Less clear, however, is the existence of racial bloc voting, or voting along racial lines.

In this connection, we are not unmindful of the fact that two of the current 9 members of the council are black, having been elected, as they were, at-large and, presumably, with the support of white voters. But we likewise cannot ignore the very pertinent recent observation of the Court of Appeals for the Fifth Circuit in Kirksey v. Board of Supervisors of Hinds County, Mississippi, C.A. No. 75-2212 (5th Cir. 1977) in which the court reaffirmed its earlier position that the election of minorities does not preclude a conclusion that the minority vote has been diluted. While the court's observation may not, in another setting, be significant, we find it particularly pertinent here in view of the county's constant resistance, since 1975, to conducting a referendum which could have, under a variety of circumstances, resulted in the utilization of single member districts, a form of government which our inquiry shows is favored and has been sought by a majority of the blacks in Charleston County. Also, our analyses of other recent submissions from Charleston County, involving a proposed city-county consolidation and annexations to the City of Charleston, revealed indications that racial bloc voting may exist.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change will not have a discriminatory effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance.

Accordingly, on behalf of the Attorney General I must interpose an objection to the implementation of the requirements of the South Carolina Home Rule Act in the context of the at-large election system existing in Charleston County. However, should the county undertake to elect its councilmen from single member districts, the Attorney General will reconsider his determination upon being so advised.

Of course, as provided by Section 5 you have the right to seek a declaratory judgment from the District Court for the District of Columbia that the changes in question neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Sections 51.21, 51.23 and 51.24 of the Attorney General's Section 5 guidelines (28 C.F.R. 51.21, 51.23 and 51.24) permit reconsideration of the objection should you have new information bearing on the matter. However, until such time as the objection may be withdrawn or a judgment from the District of Columbia Court is obtained, the legal effect of the objection by the Attorney General is to make the changes required by the Home Rule Act legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division