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DJ 166-012-3
A4532

JUL 5 1978

Mr. Cyrus T. Sloan, III
McLendon and Sloan
Attorneys at Law
111 Witcover Street
P.O. Box 1096
Marion, South Carolina 29571

Dear Mr. Sloan:

This is in reference to the changes affecting voting made by the Ordinance for Nonpartisan Election Procedures adopted by the City of Marion, Marion County, South Carolina. Your submission was completed on May 6, 1978.

Except as explained below, the Attorney General does not interpose any objections. 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 changes.

With respect to Section 4 of the Ordinance, which provides for the majority vote run-off method of election, we have given careful consideration to the information furnished by you as well as Bureau of the Census data and information and comments from other interested parties. Our analysis reveals that blacks constitute a substantial proportion of the population of the City of Marion, that the city council is elected at-large, and that racial bloc voting exists. Under these circumstances, recent court decisions, to which we feel obligated to give great weight, indicate that a majority vote requirement could have the potential for abridging minority voting rights. See White v. Regester, 412 U.S. 755, 766-67 (1973), Zimmer v. McKeithen, 485 F. 2d 1297, 1305 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976); Nevitt v. Sides, 571 F. 2d 209 (5th Cir. 1978).

Section 5 of the Voting Rights Act places upon the submitting authority the burden of proving that a submitted change in voting practice and procedure does not have a racially discriminatory purpose or effect. (See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19.) Because of the potential for diluting black voting strength inherent in the use of a majority vote requirement under circumstances such as exist in Marion and because the city had advanced no compelling reason for its use, we are unable to conclude that the burden of proof has been sustained and that the imposition of the majority requirement, in the context of an at-large election system, will not have a racially discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to the majority vote requirement contained in Section 4 of the Ordinance for Nonpartisan Election Procedures.

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. 51.7(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 judgement from the District of Columbia Court obtained, the effect of the Attorney General's objection is to make the change to the majority vote requirement legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division