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FEB 8 1979

Mr. E. O. Carter
County Administrator
Edgefield County Council
Post Office Box 663
Edgefield, South Carolina 29824

Dear Mr. Carter:

This is in reference to the implementation of the South Carolina Home Rule Act by Edgefield 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 December 18, 1978.

We have given careful consideration to information furnished by you as well as Bureau of the Census data and information and comments from interested parties. Our analysis reveals that blacks constitute 32 percent of the population of Edgefield County and that under the proposed ordinance implementing Home Rule, council members will be elected at large from residency districts. While this is, ostensibly, the same system of election used by the county in electing its present council, we note differences in that body as presently constituted and as it would exist under the Home Rule Act.

According to our information, under "Home Rule", the county council may create special taxing districts, tax different areas at different rates depending on services rendered, enact ordinances to enforce powers granted by the Home Rule Act and fill vacancies on the

council by election rather than appointment by the Governor upon the recommendation of the membership of the House of Representatives from Edgefield County. According to our information these powers, and others, were not previously exercised by the county council. 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 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.

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); Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976); Bolden v. City of Mobile, 571 F.2d 238 (5th Cir. 1978), prob. jur. noted, 47 U.S.L.W. 3221 (U.S. Oct. 2, 1978) (No. 77-1844). Our analysis of your submission reveals that although blacks represent a substantial proportion of the population of Edgefield County, no blacks have ever been elected to the Edgefield County Council. Our analysis further reveals that bloc voting along racial lines exists in Edgefield County. With racial bloc voting present and under the at-large elections blacks have not elected candidates of their choice to the county council. Under a system of fairly drawn single-member districts, blacks would be afforded access to the political process in Edgefield County.

Furthermore, a significant element of our analysis during the review of a change such as this is in the nature of home rule itself. As originally conceived and presented to the public, "home rule" was a new system that transferred a significant measure of political power from each county's legislative delegation to the county councils in a way that called for the full and active participation of the electorate in selecting the type of government and the method of election

through referenda called by the county council, the legislature (at the suggestion of the county's legislative delegation) or upon the petition of 10% of the registered electorate. It was on such understanding of public participation and involvement that the Attorney General declined to object to the statewide home rule authorization act when it was submitted in 1975. Moreover, we understood that the electorate in each county would choose among the systems set forth in the Home Rule Act - i.e., single-member districts or at-large elections and one of the designated alternate forms of government.

Home rule, as we understood it from contemporaneous representations, was to be essentially a new and expanded system of county governance which would provide a readily available opportunity for expression of the preferences of the electorate from among the specifically enumerated types of government and methods of election. However, as interpreted to date by the South Carolina judiciary, "home rule" appears to be something less than what initially was represented to us. First, in Dodds v. Stuckey the court determined that instead of being limited to the specified methods of election enumerated in the Act, the method of election then existing in Charleston County (at-large with residency districts) would, in the absence of a referendum, be continued. Second, in Infinger v. Edwards the court held (again with respect to Charleston County) that a referendum could not be held after July 1976 despite the filing of a timely and sufficient petition prior to that date. Finally, in Hamilton v. Tillman the court held that no subsequent referendum on method of election could be held since the law allowed referenda only with respect to form of government, not method of election.

While we are mindful of the fact that the question of the sufficiency of the petition filed in Edgefield's case is still pending before the state court, the only existing judicial interpretations we have available to us at the present time are those cited above. Had these interpretations of the Home Rule Act been available to us at the time of our initial consideration they would have had a significant impact on our evaluation of the statewide consequences of home rule. Even though we recognize that that appraisal is now beyond recall, the state court's interpretations are now available and must be taken into consideration in our analysis of the effects of "home rule" in Edgefield County.

Our review discloses that there has been substantial support for a referendum in Edgefield County, particularly among the black voters. According to our information black citizens of Edgefield County filed petitions in May 1976 requesting such a referendum, a request that was denied by the county and which is now pending before the State Supreme Court. It is our further information that black citizens in Edgefield strongly favor the adoption of a single-member district system of elections. However, because the county has rejected the effort of the black community to petition for a referendum and since the county also has chosen not to call for such a referendum on its own motion, the apparent sentiment for a change to single-member districts has not been brought to a vote. Accordingly, the promise of public participation in the selection of the form of government and method of election under home rule has simply not been realized in Edgefield County.

Under Section 5 the submitting jurisdiction has the burden of proving both that the change in question was not adopted with a discriminatory purpose and that its effect will not be discriminatory. Georgia v. United States, 411 U.S. 526, 538 (1973); City of Richmond v. United States, 422 U.S. 358, 380-81 (1975) (Brennan, J., dissenting); 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 Edgefield County. However, should the county undertake to adopt an electoral system that more accurately reflects minority voting strength, such as single-member districts, the Attorney General will reconsider his determination upon being so advised.

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 the changes in question do not have the purpose and will not 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. 51.21(b) and (c), 51.23, and 51.24) permit you to request reconsideration of this objection by the Attorney General. However, until the judgment from the District Court is obtained or the objection withdrawn, the effect of the objection by the Attorney General is to make the changes required by the Home Rule Act legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Voting Section Attorney David H. Hunter at 202/633-3449.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division