Honorable Mark White
Secretary of State of Texas
Capitol Station
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to our letter of January 23, 1976, and in further reply to your submission of the subdistrictings of 9 multi-member Texas House of Representatives districts in House Bill 1097 of the 1975 Session of the Texas Legislature, to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on November 26, 1975.

We responded to your submission prior to January 26, 1976, the last day of the 60-day period As set out in Section 51.22 of our procedural guidelines for the administration of Section 5, 28 C.F.R. §51.22:

> When a decision not to object is made within the 60-day period following receipt of a submission which satisfies the requirements of §51.10(a), the Attorney General may reexamine the submission if additional information comes to his attention during the remainder of the 60-day period which would require objection in accordance with §51.19.

cc: Public File (Rm. 920)
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Such additional information has come to our attention and we have reexamined the submission of House Bill 1097 with regard to the effect of new single-member districts defined in House Bill 1097 for Nueces County, Districts 48A through 48C.

The additional information in this regard concerned the minority population within the single-member districting plans for Nueces County presented to the Court prior to its order of January 28, 1975, in Graves v. Barnes. During our initial examination of the districts set out in House Bill 1097 for Nueces County we erroneously considered the population statistics of the plan submitted to the Court by the State as statistics relative to the plan which the Court adopted. On that erroneous basis we had determined that the plan set out in House Bill 1097 would not dilute minority voting strength given the results that would flow from fairly drawn alternative districting plans.

Our evaluation of the new single-member districts in House Bill 1097 for Nueces County indicated that the district lines are drawn through a cognizable minority residential area known as "the corridor" in Corpus Christi resulting in an apportionment or fragmenting of that area into each of the 3 districts, only in one of which minorities represent a majority of the population. It was our understanding that in approaching the question of how to draw new single-member districts for Nueces County, the legislature utilized the theory that a fair districting of the county, given the county's population, should be designed to result in one "safe" Mexican-American district, one safe Anglo district, and one "swing" district with close to 50% Anglo and Mexican-American population.

We had no objection to this districting approach as long as it did not result in a dilution of minority voting strength and, as I explained above, given our erroneous understanding of available districting alternative we found no such dilution would result. However, we now realize that the districting plan for Nueces County adopted by the Court in Graves v. Barnes, which apportions the corridor into only 2 districts, results in 2 districts in which minorities represent a significant majority of the population. Thus, on the basis of our previous evaluation and in the light of population statistics of the districting plan ordered by the Court in Graves v. Barnes, it appears that fairly drawn alternative districting plans which avoid fragmenting the corridor into as many as 3 districts also would make a significant difference in the ability of minority residents of Nueces County to elect representatives of their choice. In addition, we have determined, as we had determined previously, that the result in House Bill 1097 for Nueces County does not appear to be necessary on the basis of natural boundaries or overriding considerations of district compactness.

Therefore, the remaining question is whether the legislative approach for the districting of Nueces County constitutes a compelling governmental justification for the results that it achieved in Nueces County. I believe it does not. Although the theory used in House Bill 1097 for apportioning the population of Nueces County could, under other circumstances, be considered to reflect a legitimate interest of the state, under the standards for our Section 5 review as enunciated in my letter of January 23, 1976, and given the facts as described above, I view the apportionment approach used in House Bill 1097 for

Nueces County as a minimization and thus a dilution of minority voting strength since it unnecessarily and unfairly limits minorities to only one district in which they would represent a majority of the population.

Accordingly, we are unable to conclude as we must under Section 5 that implementation of the districts 43A - 43C set out in House Bill 1097 for Nueces County will not have a discriminatory effect. Under these circumstances I must, on behalf of the Attorney General, interpose an objection to the implementation of the specified districts set out in House Bill 1097 for Nueces County. So that there be no misunderstanding, I should point out that the objection interposed herein is in addition to the objections interposed in my letter of January 23, 1976, to the implementation of the districts 7A - 7C and 32A - 32I set out in House Bill 1097 for Jefferson and Tarrant Counties.

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 these districts neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color or in contravention of the guarantees set forth in Section 4(f) of the Act. However, until and unless such a judgment is obtained, the provisions objected to are unenforceable.

I apologize for any inconvenience that may have been caused to you by our error in this matter.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division