MAR 6 1972

DLN:GWJ:gaw

DJ 166-012-3

Honorable Daniel R. McLeod
Attorney General
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211

Dear Mr. Attorney General:

This is in reference to the redistricting plans for South Carolina State Senate Districts (Act No. 932) submitted by your office pursuant to Section 5 of the Voting Rights Act of 1965 and received by this Department on November 22, 1971. Supporting information necessary to make the submission complete was received by this Department on January 5, 1972. Thus, under departmental guidelines, the Attorney General's response is due on March 6, 1972.

We have given careful consideration to the submitted districting plans (Plan A and Plan B) and the supporting information, as well as to information received from other sources. Insofar as time limitations have allowed, we have studied both plans in detail. As a result, however, we are unable to conclude, as we must under the Voting Rights Act, that either proposed Plan A or Plan B will not have the effect of abridging the right of black citizens of South Carolina to vote on account of race or color.

A careful analysis and review of the demographic facts involved and recent court decisions identify several significant areas of concern. Twelve of the 23 proposed districts under Plan A and 14 of the 20 districts in Plan B are multi-member. We note that in these districts candidates must run for numbered posts. It is our understanding also that South Carolina law requires a majority of votes to win primary elections. A substantial number of the multi-member districts in each plan have significant concentrations of black population.

Our analysis of recent federal court decisions dealing with issues of this nature, and to which we feel obligated to give great weight, leaves us unable to conclude, with respect to these plans, that the combination of multi-member districts, numbered posts, and a majority (run-off) requirement would not occasion an abridgement of minority voting rights in South Carolina. The reasoning of these recent cases is illustrated by the decision of the federal district court in North Carolina which commented with respect to numbered posts in multi-member districts, "It is clear that the numbered seat law may have the effect of curtailing minority voting power." (Scott v. Dunston, E.D.N.C. No. 2666-Civil, Slip Opinion, n. 9 at p. 17, (Jan. 10, 1972)). Similarly, the three-judge court considering the Texas legislative reapportionment found both the majority run-off and the numerical post requirement tended to abridge minority voting power and "highlight the racial element where it does exist." Graves v. Barnes, W.D. Tex., No. A-17-CA-142, Slip Op. at p. 38. See, also, Sims, Farr, and U.S.A. v. Amos, No. 1744-N, (M.D. Ala., January 3, 1972); Sugsie v. The Governor of

Louisiana, No. 71-202 E.D. La., August 24, 1971). And the Supreme Court, while not holding multi-member districts unconstitutional, per se, has recognized the potentially discriminatory effect such districts can have by submerging a cognizable racial minority into a majority white district. See Whitcomb v. Chavis, 403 U.S. 124 (1971).

For the foregoing reasons, I must on behalf of the Attorney General interpose an objection to changes submitted by these reapportionment plans. We have reached this conclusion reluctantly because we fully understand the complexities facing any state in designing a reapportionment plan to satisfy the needs of the state and its citizens, and, simultaneously, to comply with the mandates of the federal Constitution and laws. We are persuaded, however, that the Voting Rights Act compels this result. However, nothing contained herein should be construed in any way as addressing the Fourteenth Amendment issues involved, which I understand are pending before the Court.

Of course, Section 5 permits seeking approval of all changes affecting voting by the United States District Court for the District of Columbia irrespective of whether the changes have previously been submitted to the Attorney General.

Inasmuch as the United States District Court for the District of South Carolina has deferred proceedings in pending cases involving this reapportionment plan until the Attorney General completed his review, I am taking the liberty of furnishing a copy of this letter to the Court.

Sincerely,

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division