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DJ 166-012-3

SEP 24 1974

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 Charter Commission Report for Charleston County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was completed on July 26, 1974.

Section 51.7 of the Attorney General's Procedures for the Administration of Section 5 of the Voting Rights Act of 1965 (28 C.F.R. 51.7) provides that the Attorney General will make no decision on the merits of "a change affecting voting which has been submitted prior to final enactment or final administrative decision, provided that regarding a change as to which approval by referendum . . . is required . . ., the Attorney General may consider and issue a decision concerning the change prior to the referendum . . . ." We understand that a referendum on the adoption of the voting change involved in this submission is required and is scheduled for November of this year. However, in view of your submission to the Attorney General prior to the referendum, the instant determination is being made pursuant to his Section 5 regulations.

The Attorney General does not interpose an objection to the submission except as noted below. In this regard, we 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 a change.

Our analysis of the Charter Commission Report indicates that black persons represent 31% of the Charleston County population, and that under the proposed charter council members would be elected through the combined use of multi-member districts, at-large elections, a majority vote requirement, residency requirements and numbered posts. Where, as here, there is a cognizable racial minority and a history of voting along racial lines, the decided cases have held that methods of election such as those proposed here have an impermissible dilutive effect on black voting strength if, as is also apparent here, available alternative methods of election such as single-member districting would allow a fair opportunity for the election of representatives directly responsive to the needs of the minority population. See, White v. Regester, 412 U.S. 755 (1973); Georgia v. United States, 411 U.S. 526 (1972); Turner v. McKeithen, 490 F.2d 191 (5th Cir. 1973); Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973); and Beer v. United States, 374 F. Supp. 363 (D. D.C. 1974).

Under these circumstances, I am unable to conclude that the implementation of these aspects of the proposed charter do not have the purpose or effect of denying or abridging the right to vote on account of race or color. Accordingly, I must on behalf of the Attorney General interpose an objection to the implementation of the above-mentioned methods of election as contained in Sections 5.01, 5.04.01, 12.02 and 12.03 of the submitted charter.

I realize that the submitted charter is the result of a long and difficult process, and that the referendum regarding adoption of the proposed charter is scheduled for November 1974. I believe, however, that our action here is mandated by judicial precedent and the burden of proof placed upon submitting authorities by Section 5 of the Voting Rights Act.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that these features of the charter neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race. However, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render unenforceable those aspects of the charter objected to herein.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division