

JAN 16 1976

Mr. William T. Stephens
Assistant Attorney General
State of Alabama
Montgomery, Alabama 36104

Dear Mr. Stephens:

This is in reply to your submission of revisions in the state primary election law, Act No. 1196 (S. 1018) of the 1975 Session of the Alabama Legislature, to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on November 17, 1975.

We have considered carefully the submitted changes and supporting materials as well as information and comments received from other interested parties. On the basis of our review and analysis, the Attorney General does not interpose any objection to the changes involved, except insofar as set forth below. 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 the changes contained in Sections 5 and 43 of the submitted legislation, the primary election day would be moved from May to the first Tuesday in September (after 1976) and political organizations not using primaries would have to submit the names of their

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nominees by 5:00 PM on primary election day. However, other provisions of Alabama law require that such organizations hold their mass meetings, including those held for the purpose of selecting delegates to a nominating convention, on the same day the primary election is held (Sections 39 and 40). Also, Section 145 of Title 17 requires that nominees for the general election must be certified no later than 60 days prior to the general election. It would seem virtually impossible for organizations utilizing the mass meeting-convention method of nomination to comply with these requirements in selecting their candidates. In addition, in an instance such as 1976 (even though the new primary date would not be effective in 1976) nominees resulting from a mass meeting held on the date of the primary could not be certified to appropriate officials in compliance with Section 145 inasmuch as the primary election would be held less than 60 days from the date of the general election.

Since, according to our information, the National Democratic Party of Alabama, a virtually all-black political party, is the prime political party in Alabama which presently relies solely on the convention method of nomination, and in view of this confusing state of the law, we cannot conclude that these proposed changes will not have the effect of denying or abridging the right to vote on account of race or color.

In addition, our analysis shows that the repealer clause, Section 44, as it applies to the repeal of former Sections 373-394 of Title 17 of the Alabama Code, dealing with contested elections, creates a potential for adverse treatment of blacks. We understand that a bill concerning contested elections was being considered in the legislature simultaneously with the primary law

revisions, but that it did not come to passage, and will be considered again early in the 1976 session. Nevertheless, the net effect of the repeal provisions of Section 44 is to leave the state with no effective rules governing contested elections and, irrespective of whether inadvertence was the cause of this situation, the absence of such rules, so long as it continues, is a factor that must be considered by the Attorney General upon a submission under Section 5. In view of Alabama's history of racial problems in the voting area, particularly with respect to some county democratic executive committees, we cannot conclude that the deletion of rules and guidelines concerning contested elections will not have the effect of denying or abridging the right to vote on account of race or color.

For the foregoing reasons, therefore, I must, on behalf of the Attorney General, interpose an objection to Sections 5, 43 and 44 of Act No. 1196. 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 provisions neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race. However, until and unless such a judgment is obtained, the provisions objected to are unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division