



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 1, 1989

Mr. Albert W. LaPierre
Alabama Democratic Party
4120 - 3rd Avenue South
Birmingham, Alabama 35222

Dear Mr. LaPierre:

This refers to the amendment of the rules of the Alabama Democratic Party, which changes the method of selecting members of the State Democratic Executive Committee (SDEC); alters the method of selecting the Vice Chairman for Minority Affairs; and changes the method of selecting minority members of the Executive Board of the SDEC in the State of Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on October 2, 1989.

Organizational changes made by political parties require preclearance under Section 5 of the Voting Rights Act if a state has delegated public electoral functions to political parties and the changes relate to such delegated functions. Party political activities such as those related to campaigning, recruiting members and drafting platforms, are private associational activities not reached by Section 5. See generally Guidelines for the Administration of Section 5 of the Voting Rights Act. 28 C.F.R. 51.7. In Alabama, the state has delegated significant authority over the conduct of primary elections and the selection of candidates in state elections to the political parties. See e.g. Ala. Code § 17-16-1, et seq. The Democratic Party of Alabama, in turn, has vested the SDEC with authority to conduct these state authorized functions. Accordingly, the changes in the selection of officers and members of the SDEC in this submission may not be implemented without meeting the preclearance requirements of Section 5.

The relevant existing procedures were adopted in 1974 and 1983 as part of an affirmative action plan negotiated between party leaders and the Alabama Democratic Conference (ADC), an organization of black Democrats. The plan was designed to remedy a long history of exclusion of and discrimination against blacks

in all aspects of party affairs. At the time it was negotiated, the ADC was accepted by the Party as the exclusive representative of black Democrats. The plan was drawn explicitly to assure black participation at all levels of party affairs. Thus, the ADC was awarded three seats on the SDEC executive board, the president of ADC was to serve as Vice Chairman for Minority Affairs and, beginning in 1983, the ADC was to appoint 23 additional members of the SDEC. Following this latter development, the appointed black members were to elect three of their number to fill the three positions on the SDEC's Executive Board. These provisions received the requisite preclearance under Section 5.

The negotiated figure of 23 appointed members, when combined with elected blacks, produced a total black membership on the SDEC that approximately equalled the state's black population percentage of 25.6 percent. Thus, the Party's affirmative action goal was to appoint 23 extra members to assure that black membership on the SDEC would, at a minimum, reflect statewide black population. While we have some concern whether the record justifies the indefinite use of such race conscious selection of public officials (see J.A. Croson v. City of Richmond, 109 S.Ct. 706 (1989)), the affirmative action plan as originally conceived otherwise appears to be rational and not facially invalid.

Now, after several elections and a number of years experience under this system, the Party proposes certain changes to this plan. The Party recognizes a continuing need to enhance the number of blacks on the SDEC by appointment, but proposes to change from a flat requirement of 23 appointees to a formula number needed to produce population parity. And, instead of allowing the ADC to fill the appointed slots from among all black Democrats as in the past, it is proposed that the appointees be from among the unsuccessful black SDEC candidates in descending order according to the number of votes received. The Party also proposes to elect the Vice Chairman for Minority Affairs, rather than fill that position with the president of ADC, and to eliminate the three Executive Board members previously selected by the ADC. If needed to achieve population parity, additional positions on the Board would be elected by the entire SDEC.

Under Section 5, we are required to review changes such as this to determine whether the submitting authority has shown them to be free of racial purpose or retrogressive effect. In the context of a race conscious affirmative action plan we believe that the law likely requires, but at the least permits, periodic review and adjustment of racially preferential goals and/or quotas. Here, because it is projected that more blacks will be elected to the SDEC, the number of appointees necessary to achieve the minimum goal of population parity will be somewhat less than the previously agreed upon 23 seats. The adjustment

of this number to a formula amount, under these circumstances, seems consistent with the remedial purpose of the plan and is unobjectionable.

The other changes are more problematic. First, the additional black members will no longer be selected by a constituent black organization (ADC). Rather, they will qualify, automatically, in accordance with the number of votes received in unsuccessful campaigns for SDEC election. This change seems unrelated to improving the affirmative action plan and, in fact, could result in selection of persons in majority black districts who had failed to attract local black support. Second, we have received a number of allegations that withdrawing from the ADC the authority to select the Vice Chairman for Minority Affairs and three members of the Executive Board, is a calculated effort to decrease black influence and participation in Party affairs, not an effort to adjust its affirmative action plan to meet changed circumstances. The authority taken away from the ADC, a black constituent organization, is transferred to the entire SDEC, a body which foreseeably will, by Party rule, continue to be about 75 percent white. Nor has it been demonstrated that this change is related to giving greater recognition to the existence of other black political organizations which may now be competing with the ADC. In these circumstances, we are unable to certify that the Party has carried its burden under Section 5 with regard to the manner of selecting extra black members to the SDEC nor with respect to the change in method of choosing the Vice Chair for Minority Affairs and minority members of the Executive Board. On behalf of the Attorney General, I therefore interpose an objection to these features of the submitted plan.

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 changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the Party rule changes concerning the method of selecting members to the State Democratic Executive Committee (SDEC) and the changes in the manner of selecting the Vice Chair for Minority Affairs and the minority members of the Executive Board continue to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Alabama Democratic Party plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202/724-6718), Deputy Chief of the Voting Section.

Sincerely,

A handwritten signature in cursive script that reads "James P. Turner". The signature is written in black ink and is positioned above the typed name.

James P. Turner
Acting Assistant Attorney General
Civil Rights Division