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AUG 23 1976

Honorable A. F. Summer
Attorney General
State of Mississippi
Jackson, Mississippi 39205

Dear Mr. Attorney General:

This is in reference to Chapter 355 (House Bill 197), Chapter 412 (House Bill 876), Chapter 481 (Senate Bill 2122) and Chapter 485 (House Bill 114), Laws of Mississippi of 1976, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on June 22, 1976. Although we noted your request for expedited consideration, we were unable to comply.

In regard to Chapter 412 (House Bill No. 876), the Attorney General does not interpose any objection to the change in question. 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 shall not bar a subsequent action to enjoin the enforcement of such change.

In regard to Chapter 355 (House Bill No. 197), the Attorney General does not interpose an objection to the Act, insofar as it authorizes each municipality to hold a referendum on the question of the change to the mayor-council form of government. However, because the Act requires additional action by each municipality prior to the adoption of the mayor-council form of government, it will be necessary for each jurisdiction to submit for review under Section 5 of the Voting Rights Act any change in its form of government. As noted above, the failure of the Attorney General to interpose an objection to this Act at this time does not bar any subsequent judicial action to enjoin the enforcement of such changes.

On August 19, 1976, we received your telegram requesting to withdraw from consideration approval of Senate Bill 2711 and House Bill 114 previously submitted for approval under the 1965 Voting Rights Act as amended. We have given serious consideration to this request, but regret that we are unable to comply with it.

By 5:00 p.m., August 17, 1976, when you first requested to withdraw the two bills from our consideration, we had completed our research, analysis, and deliberations concerning these bills. Therefore, absent a showing of some compelling necessity for the withdrawal, consistent administrative practice requires us to conclude that the request is untimely.

In your telephone conversation with Barry Weinberg, Deputy Chief of the Voting Section, and in telephone conversations on August 18, 1976, with David Hunter, an attorney in the Voting Section, and on August 19, 1976, with me, you indicated a concern that preclearance of these bills at this time might disrupt this year's election schedule. We have examined your concern carefully, but because Section 18 of House Bill 114 states that the effective date of the act will be January 1, 1977, we are frankly unable to find a basis to believe that the feared disruption can or will occur.

As you may know, House Bill 114 is very similar in its effect to House Bills 362 and 363 (1970 Session), to which objections under Section 5 were interposed on April 26, 1974. With this ruling in mind, we have received no information indicating that House Bill 114 is not the same in all material respects with regard to the features which compelled our previous objection. In view of the burden of proof required by law, we are unable to conclude on the basis of the information presently available that the change to the open primary system will not have the prescribed purpose or effect.

In considering the very similar proposal previously, we stated in our letter of April 26, 1974, that the open primary system "would have the practical effect of imposing a majority vote requirement on the general election which heretofore has been subject only to a plurality requirement

The plurality, in turn, has accounted for the recent success of blacks who, for the most part, have won as independents in general elections. We note that some 195 blacks ran as independents in the 1971 general elections alone. That the dilutive effect on black voting strength would be substantial is demonstrated further by Census statistics which show that some 10 of the 82 Mississippi counties have voting age populations which are 42% - 48% black and that 6 others are 37% or more black.

Our research indicates that the same potential for a discriminatory effect would exist if House Bill 114 were implemented. While the number of blacks running as independents in the general elections of 1975 was reduced from what it had been in 1971, the use of independent candidacies remains a significant form of political participation for black citizens in Mississippi.

For these and related reasons, I find that I must, on behalf of the Attorney General, interpose an objection to House Bill 114. Since Chapter 481 is essentially a modification of House Bill 114, the objection to House Bill 114 has the effect of rendering that chapter inoperative. We are therefore making no determination with respect to Chapter 481.

As you know, under the Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.21(b), you may request the Attorney General to reconsider his objection within 10 days of the objection. If you choose to make such a request, any information you could provide to us showing that the "open primary" system would not have a discriminatory purpose or effect would be helpful. Our decision with respect to a request for reconsideration would come no later than 60 days following your provision of such information.

Of course, as provided by Section 5 of the Voting Rights Act, you also have the right to seek a declaratory judgment from the District Court for the District of Columbia that the "open primary" system neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division