Office of the Assistant Attorney General *Washington, D.C. 20530*

30 NOV 1981

Mr. Alex Brock
Executive Secretary - Director
State Board of Elections
Suite 801, Raleigh Building
5 West Hargett Street
Raleigh, North Carolina 27601

Dear Mr. Brock:

This is in reference to the 1968 amendment (H.B. No. 471 (1967)), which provides that no county shall be divided in the formation of a Senate or Representative district and which was recently submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on October 1, 1981.

We have made a careful review of the information that you have provided, the events surrounding the enactment of the change, the application of the amendment in past legislative reapportionments, and comments and information provided by other interested parties. On the basis of that analysis, we are unable to conclude that this amendment, prohibiting the division of counties in reapportionments, does not have a discriminatory purpose or effect.

Our analysis shows that the prohibition against dividing the 40 covered counties in the formation of Senate and House districts predictably requires, and has led to the use of, large multi-member districts. Our analysis shows further that the use of such multi-member districts necessarily submerges cognizable minority population concentrations into larger white electorates. In the context of the racial bloc voting that seems to exist, such a phenomenon operates and would continue to operate "to minimize or cancel out that voting strength of racial . . . elements of the voting population." Fortson v. Dorsey, 379 U.S. 433, 439 (1965).

This determination with respect to the jurisdictions covered by Section 5 of the Voting Rights Act should in no way be regarded as precluding the State from following a policy of preserving county lines whenever feasible in formulating its new districts. Indeed, this is the policy in many states, subject only to the preclearance requirements of Section 5, where applicable. In the present submission, however, we are evaluating a legal requirement that every county must be included in the plan as an undivided whole. As noted above, the inescapable effect of such a requirement is to submerge sizeable black communities in large multi-member districts.

Under these circumstances, and guided by the standards established in cases such as Beer v. United States, 425 U.S. 130 (1976), we are unable to conclude that the 1968 amendment requiring nondivision of counties in legislative redistricting does not have a racially discriminatory purpose or effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to that amendment insofar as it affects the covered counties.

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 this change has 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, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia is obtained, the effect of the objection by the Attorney General is to make the 1968 amendment legally unenforceable.

If you have any questions concerning this matter, please feel free to call Carl W. Gable (202-724-7439), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division