May 16, 1984

Mr. Raymond P. Sykes
Chairman, Halifax County
Board of Elections
Route 2, Box 340
Whitakers, North Carolina 27891

Dear Mr. Sykes:

This refers to two statutes that changed the method of electing the Halifax County, North Carolina, Board of County Commissioners: (1) 1967 N.C. Sess. Laws 839, which provided for the May 4, 1968, special election, increased the length of terms for county commissioners from two to four years, and implemented staggered terms; and (2) 1971 N.C. Sess. Laws 661, which readopted the existing at-large election system with an increase in the number of county commissioners from five to six. The voting changes occasioned by these statutes were 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 March 17, 1984.

We have given careful consideration to the information provided with your submission along with that provided by other interested parties. The Attorney General does not interpose any objection to the voting changes occasioned by 1967 N.C. Sess. Laws 839. Section 5 of the Voting Rights Act expressly provides, however, that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With respect to the voting changes occasioned by 1971 N.C. Sess. Laws 661 (hereinafter "Chapter 661"), we cannot reach a like conclusion. At the outset, we note that, even though Chapter 661 in large measure readopted the existing at-large election system, modification of that system by the addition of a sixth county commissioner to be nominated and

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elected from the Roanoke Rapids Township residency district (District 2) constitutes a change with respect to the method of electing the county commission as a whole. See City of Lockhart v. United States, 51 U.S.L.W. 4189 (U.S. Feb. 22, 1983).

Our analysis of Chapter 681 reveals that no black candidate has been elected to the county commission in this century and that racial bloc voting in Halifax County is severe and persistent. The use of residency districts precludes single-shot voting by black citizens, and a majority vote requirement applies to primary elections. According to statistics you have supplied, as of October 1983 only 50 percent of the eligible black voters were registered, whereas 67 percent of the eligible white voters were registered. Black citizens of Halifax County bear socioeconomic disadvantages not borne by white citizens that result from racial discrimination and impair the ability of blacks to participate effectively in the political process. And as found by the three-judge court in Gingles v. Edmisten, No. 81-803-CIV-5 (E.D. N.C. Jan. 27, 1984), "North Carolina [has] officially and effectively discriminated against black citizens in matters touching their exercise of the voting franchise...." Slip op. at 26.

While we have noted the submission's statement that Chapter 681 was adopted to remedy malapportioned residency districts, the county has presented no adequate explanation for adopting the method chosen. The county commission admittedly considered other alternatives but those other alternatives and the reasons(s) for their rejection have not been identified. Several obvious options, such as eliminating residency districts (thereby allowing single-shot voting) or adopting a single-member district election system, would have enhanced black voting strength yet apparently were rejected in favor of the Chapter 681 alternative which maintained black voting strength at a minimum level. There is no evidence that black citizens were consulted about the malapportionment issue, nor was it submitted to the voters in a referendum as has been the past procedure for modifying the method of electing the county commission.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In addition, a submitted change may not be precleared if it "so discriminates on the basis of race or color as to violate the Constitution" (Beer v. United States, 425 U.S. 130, 141 (1976)) or if we find that the plan violates Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973; S. Rep. No. 97-417, 97th Cong., 2d Sess. 12 n. 31 (1982). Under these principles, and in view of the circumstances discussed above, we are unable to conclude, as we must under Section 5, that Chapter 681 meets the Act's preclearance requirements. Accordingly, on behalf of the Attorney General, I must interpose an objection to the changes occasioned by Chapter 681.

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 or color. In addition, Section 51.44 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 effect of the objection by the Attorney General is to make the Chapter 681 changes legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Halifax County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Because of related issues pending in United States v. Halifax County, C.A. 83-88-CIV-8 (E.D. N.C.), we are providing a copy of this letter to each member of the three-judge court and to counsel of record.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division