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DLN:JEK:clk
DJ 166-012-3

Mr. Leslie Hall
Assistant Attorney General
State of Alabama
Montgomery, Alabama 36104

MAR 20 1972

Dear Mr. Hall:

This is in reference to your submissions under Section 5 of the Voting Rights Act of 1965 to the Attorney General of Act No. 528, Acts of Alabama, 1967, Act No. 1451, Acts of Alabama, 1971, and Act No. 2268, Acts of Alabama, 1971. These submissions were received on January 20, 1972, November 1, 1971, and January 21, 1972, respectively. Supplemental information pertaining to Act No. 1451 was received December 11, 1971.

As I explained in my letter of February 14, the submission of Act No. 528 was necessary before the Attorney General could evaluate its successor, Act No. 1451. Thus, the sixty-day period of Section 5 began to run on Acts Nos. 1451 and 528 on January 20, 1972.

After considering the acts submitted, I cannot conclude that certain changes will not have the effect of abridging voting rights on account of race.

Section 6 of Act No. 1451 changes the procedure for electing County Commissioners from election by districts to election at-large within the county, and from requiring election by a plurality to requiring election by a majority of the voters. Where, as here, a county with a majority white population has within

it an election district within which a majority of the population is black, the change from election by districts to an at-large method of election necessarily has the effect of diluting that black voting strength, especially when a majority of the votes cast is required for election to an office. See Whitcomb v. Chavis, 403 U.S. 124 (1971); Allen v. State Board of Elections, 395 U.S. 644 (1969); Burns v. Richardson, 384 U.S. 73 (1966); Fortson v. Dorsey, 379 U.S. 433 (1965); Graves v. Barnes, W.D. Tex., No. A-17-CA-142, Slip Op. at 37-38; Sims v. Amos, No. 1744-N (M.D. Ala., Jan. 1972). I must, therefore, on behalf of the Attorney General, interpose an objection to the implementation of this section.

Act No. 2268 provides for the at-large election of members of the Board of Education and would supersede a system of election by districts. As with the at-large procedure for electing County Commissioners, this provision would have the effect of diluting black voting strength because it would substantially reduce the ability of the black population majority in one of the districts to elect a candidate of their choice to the Board of Education. I must, therefore, on behalf of the Attorney General, also object to implementation of this Act. In addition, with respect to Act No. 2268 as well as Act No. 1451, in fashioning a new plan for the election of the officers involved you may wish to give particular consideration to what the courts say about the majority requirement in the Barnes and Amos cases cited above.

Section 9 of Act No. 528 and Section 7 of Act No. 1451 appear to allow only those persons who have been nominated by a political party to become candidates for the office of County Commissioner, thereby precluding such candidacy to persons who could have gained nomination by petition and election by write-in votes as provided by Alabama law prior to the enactment of these provisions. You have indicated, however, that these provisions should

be interpreted only to prohibit persons who are not authorized to participate in a party nomination proceeding from so doing. On the basis of your interpretation and on the basis of the assurances of Probate Judge E. A. Grouby that this provision does not constitute a change in prior law or practice and does not preclude nomination by petition or voting by electors for write-in candidates, I will not object to its implementation. From the reasons for our lack of objection to this provision, it necessarily follows that the administration of any different interpretation of this provision will constitute a change in practice or procedure which must be submitted to the Attorney General or to the District Court for the District of Columbia pursuant to Section 5 of the Voting Rights Act.

Should you wish to pursue this matter further, the Attorney General will reconsider his objections upon your request within 10 days for an opportunity to present further substantiating or explanatory information not previously available. This information may be submitted in writing or at a conference convened pursuant to Sections 51.21 and 51.23 of the Section 5 guidelines, published September 10, 1971, in the Federal Register, Vol. 34, No. 174.

In addition, Section 5 provides that you may seek a declaratory judgment from the 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. Until such a judgment is rendered by that court, however, the legal effect of the objections of the Attorney General is to render unenforceable the specified provisions.

Sincerely,

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

cc: Honorable E. A. Grouby
Judge of Probate
Autauga County
Prattville, Alabama 36067