Justice

Civil Rights Division

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

January 25, 1991

Dorman Walker, Esq.
Balch & Bingham
P.O. Box 78
Montgomery, Alabama 36101

Dear Mr. Walker:

This refers to the increase in number of members from 23 to 49; change in the method of election from single-member districts to a mix of single-member districts and multimember districts with designated posts; a March 8, 1990, organizational plan, which provides, inter alia, for a decrease in the number of popularly elected members from 49 to 40, a change in the method of election from electing members from mixed single- and multi-member districts to four 10-member districts with plurality vote, a rule for equal division by gender by district, a districting plan, a change from an elective to an elective-appointive system with the principle of fair representation, and the procedures for the appointment of additional members, for the County Democratic Executive Committee (CDEC) of the Democratic Party in Lamar County, 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 November 26, 1990.

We have considered carefully the information you have provided, as well as information from the Census, previous Section 5 submissions involving the county, and other interested parties. At the outset, we note that this submission contains a number of voting changes, adopted by the CDEC over the years, for which the CDEC has been unable to provide certain items of information due, in part, to the lapse of time between adoption and implementation of the changes and their submission for Section 5 review. However, in conducting our Section 5 analysis, we must view these changes as best we can in the context of the system that was in effect on November 1, 1964.

cc: Public File

Because the 23-single-member district plan for electing CDEC members which was in effect in 1964 appears now to be severely malapportioned, it is appropriate to compare the proposed methods of election and districting plans to a fairly drawn and properly apportioned single-member districting plan. Wilkes County v. United States, 450 F. Supp. 1171 (D.D.C. 1978). Our information reveals that minorities in the county are concentrated in such a way that a fairly drawn 23-single-member district plan would result in some districts which would have black majorities. By contrast, the highest black percentage of registered voters in any of the proposed districts in the CDEC's most recent proposal is 15 percent. It is thus apparent that any chances of electing a candidate of their choice by black voters in any of those multimember districts rest upon the fortuitous circumstances of single-shot voting and, accordingly, that the proposed change in the method of election is likely to have a retrogressive effect. In the context of the racially polarized voting patterns that seem to exist in Lamar County, it appears that the adoption of the county commission districts to serve as multimember districts for the CDEC will not afford black voters in the Lamar County Democratic electorate an opportunity equal to that of white voters to elect candidates of their choice to the CDEC.

We turn then to the change from a purely elective system to an elective-appointive system, including the provisions for appointing members under the "principle of fair representation." In some circumstances, race conscious affirmative action plans may be necessary to remedy the effects of identified past discrimination. Racial classification such as those prescribed by the 1990 organizational plan should be reserved for remedial settings since, outside such settings, "they may in fact promote notions of racial inferiority and lead to a politics of racial hostility." City of Richmond v. Croson, 109 S.Ct. 706 (1989). The record before us, however, does not disclose the requisite specificity of the injury that the "principle of fair representation" is supposed to correct.

Moreover, the principle of fair representation in Lamar County limits the level of black representation on the CDEC to 12 percent, which corresponds to the black percentage of the population. Although the CDEC has not yet implemented this provision, it appears that, if implemented in accord with the CDEC's interpretation, it would in fact reduce minority participation in the CDEC. Thus, while blacks have been able to achieve a greater than 12 percent level of CDEC representation in recent years and already have elected more than that percentage of the elected members of the proposed plan, the so-called principle of fair

representation would require the CDEC to diminish the level of black representation by adding whites to match the racial makeup of the county.

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. 51.52. In satisfying its burden, the submitting authority must demonstrate that the proposed change is not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); see also City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In light of these principles, and under the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden in this instance and I find no basis for preclearing any of the changes before us. Therefore, on behalf of the Attorney General, I must object to the changes in the method of selecting the Lamar County Democratic Executive Committee.

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 51.45 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, all of the submitted changes continue to be legally unenforceable. See also 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 Lamar County Democratic Party plans to take with respect to these matters. In particular, please advise us of the steps the party plans to take with regard to the unenforceable implementation of the objected-to provisions in the 1990 organizational plan. If you have any questions, please call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Because the instant voting changes are at issue in Hawthorne v. Baker, CV-89-T-381-S (M.D. Ala.), we are providing a copy of this letter to the court in that case.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Myron H. Thompson
United States District Judge