MAR 2 1976

Mr. C. B. Arendall, Jr.
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Dear Mr. Arendall:

This is in reply to your letter of December 30, 1975, in which you submitted to the Attorney General Act No. 823 (S. 138) of the 1965 Regular Session of the Alabama Legislature, pursuant to Section 5 of the Voting Rights Act of 1965. Your letter and the attached materials were received by this Department on January 2, 1976.

We have considered the submitted changes and supporting materials as well as information and comments received from other interested parties. On the basis of our review and analysis, the Attorney General does not interpose any objection to the changes involved, except insofar as set out below. 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 does not bar any subsequent judicial action to enjoin the enforcement of such changes.

cc: Public File (Rm. 920)

With respect to the change contained in Section 2 of Act 623, the assignment of specific administrative functions is a change from the prior system of collective responsibility of all three commissioners for all administrative functions and as such constitutes a change affecting voting within the meaning of Section 5 of the Voting Rights Act. We understand that the method of electing Commissioners both before and after Act No. 623 contained at large, numbered posts, and majority vote requirement features.

According to 1970 Census data Mobile has a population which is over 35% black. We understand that this substantial minority population is concentrated mainly in one area of the City. In addition, Mobile has a history of racial discrimination in general and our information suggests that a pattern of racial bloc voting exists.

Recent court decisions, to which we feel obligated to give great weight, suggest that an at large voting system in the context of such features as numbered posts and majority vote, has the potential for diluting the voting strength of cognizable racial minority groups. See Whitcomb v. Chavis, 403 U.S. 124 (1971); White v. Regester, 412 U.S. 755 (1973). We understand it to be the City's position that the change in Section 2 assigning specific administrative functions to each commissioner locks the city into use of the at large system of electing those commissioners since it would not be appropriate to permit a particular area of the City (as under a ward system of election) to have the exclusive right to elect a commissioner who would be responsible for administering functions for the whole city, for example, public safety.

In view of this interpretation that Section 2 rigidifies use of the at large system, incorporating as it does the numbered post and majority vote features, and in view of history of racial discrimination and evidence of racial bloc voting in Mobile, we are unable to conclude, as we must under the Voting Rights Act, that Section 2 of Act No. 623 will not have the effect of denying or abridging the right to vote on account of race or color.

Likewise, we are unable to reach such a conclusion with respect to Section 12 of Act No. 623. That section provides that, upon acceptance in a referendum, the form of government for Mobile will be a mayor and seven member council, elected at large to numbered posts. While we understand that two referenda have been held unsuccessfully on the adoption of this form of government, we also understand that Section 12 is still extant and would be implementable, from the City's standpoint, if a referendum were successful in the future. Under those circumstances, and in view of our foregoing discussion of the potential effect on black voting strength that the use of such an at large voting system would have in the context of Mobile, we similarly are unable to conclude that the change embodied in Section 12 will not have the proscribed effect.

Accordingly, I must, on behalf of the Attorney General interpose an objection to Sections 2 and 12 of Act No. 623. 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 the features of this submission here objected to neither have the

purpose nor will have the effect of denying or abridging the right to vote on account of race. However, until and unless such a judgment is obtained, Sections 2 and 12 are legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division