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November 4, 1986

E. B. Borden Parker, Esq.
County Attorney
P. O. Box 244
Goldsboro, North Carolina 27533-0244

Dear Mr. Parker:

This refers to Chapter 476, S.B. No. 303 (1965), which provides for the election of the county board of commissioners to staggered terms; the implementation schedule for staggering the terms; and an increase in the length of terms for county commissioners for the County Board of Commissioners in Wayne County, North Carolina, 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 September 5, 1986.

We have considered carefully the information you have provided as well as information received from other interested parties. With regard to the lengthening of the commissioners terms, the Attorney General does not interpose any objection. 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 change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to the staggered terms, we are unable to reach the same conclusion on the present state of the record before us. According to our analysis of county election returns, there is some indication of a racially polarized voting pattern in Wayne County and we have not yet received evidence from the County to demonstrate otherwise. In the absence of such rebuttal evidence, it is unquestionably the case that -- in the context of the county's at-large election system and a plurality-win rule in the general elections -- the ability of black voters to single-shot vote provides their only meaningful opportunity to elect candidates of their choice to office. As a general matter, the effectiveness of single-shot voting is

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lessened to the extent that fewer positions are up for election at any particular time. This appears to be the case in Wayne County, where black candidates on occasion have placed 4th and 5th in some elections even though only three seats were being filled. Therefore, changing the number of positions to be elected in any election year from five to two and three, respectively, could well have a retrogressive effect on the ability of minority voters to participate meaningfully in the electoral process and to elect a candidate of their choice.

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 the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Chapter 476, S. B. No. 303 (1965) to the extent that it provides for staggered terms.

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 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 staggered terms 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 Wayne County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division