In short, the retrogression in proposed District 1 was not unavoidable. Our review of the county's benchmark and proposed plans, as well as the alternative plans provided by the Porter plaintiffs, suggests that the significant reduction in black voting age population percentage in District 1 in the proposed plan, and the likely resulting retrogressive effect on the ability of black voters to elect candidates of choice, was neither inevitable nor was it required by any constitutional or legal imperative. In saying this we recognize that, in revising the benchmark plan to bring it into compliance with the one-person, one-vote requirement, the county took steps to mitigate the reduction in black percentage in District 1, such as including the Campbell University area in the district, and leaving the district relatively underpopulated as redrawn.

We believe that alternative redistricting approaches available to the county would not result in any retrogression in black voting strength, or occasion a significant conflict with the county's redistricting goals as they have been presented to us in your submission, or as they are reflected in the county's existing redistricting plan. Further, should the county believe that such an altered plan conflicts with the county's redistricting goals, we note that "compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria." Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412 (Jan. 18, 2001).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I am compelled to object to the 2001 redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained,

the submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Harnett County plans to take concerning this matter. If you have any questions, you should call Chris Herren (202-514-1416), an attorney in the Voting Section.

Sincerely,

J. Michael Wiggins
Acting Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

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

June 25, 2007

Michael Crowell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, North Carolina 27602-1151

Dear Mr. Crowell:

This refers to the change in method of election from nine single-member districts to six single-member districts, with three other positions filled by the top three vote recipients in an at-large election, and the resulting 2007 City Council redistricting plan, for the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on April 26, 2007; supplemental information was received through June 22, 2007.

Under Section 5 of the Voting Rights Act, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed change "neither has the purpose nor will have the effect" of denying or abridging the right to vote on account of race. *Georgia v. Unites States,* 411 U.S. 526 (1973). *See also* the Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52. "A change affecting voting is considered to have a discriminatory effect under Section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (*i.e.,* will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively." 28 C.F.R. 51.54(a) (citing *Beer v. United States,* 425 U.S. 130, 140-42 (1976)); *Reno v. Bossier Parish School Board,* 528 U.S. 320, 340, 328 (2000). The Act as amended also requires an objection if the proposed change was motivated by any discriminatory purpose.

We have carefully considered the information you have provided, as well as census data, comments, and information from other interested parties. As discussed below, I cannot conclude that the City has sustained its burden of proof under Section 5. Therefore, on behalf of the

Attorney General, I must object to the change in method of election from nine single-member districts to six single-member districts with three at-large positions, and the resulting 2007 City Council redistricting plan.

According to the 2000 Census, the City had 121,015 residents, of whom 51,288 (42.4%) were African American, 6,862 (5.7%) were Hispanic, 3,057 (2.5%) were Asian, and 1,545 (1.3%) were Native American. According to May 2007 voter registration data, at the present time, African American voters comprise 43.6 percent of the Fayetteville electorate. The City currently elects its council from nine single-member districts. African American citizens comprise between 59.2 and 65.0 percent of the registered voters in four of the nine districts. Under the proposed plan, three out of six districts would have African American voter registration majorities of between 55.7 and 56.4 percent, and all city voters would participate in the selection of three council members. If more than six candidates qualified for these seats, an initial or primary election would narrow the field to six candidates.

Under the existing system, African American voters have elected candidates of their choice to four of the nine positions on the council in all instances. There has been no suggestion, and no evidence, that African American voters may lose their firm control of those positions in the future.

In contrast, under the proposed plan, African American voters would have substantially less than certain prospects of electing candidates of their choice to four of the nine positions. The City's submission itself acknowledges that African American voters would have to depend on the uncertain prospect of winning one at-large seat in order to elect candidates of their choice to four positions:

> If those districts allow black voters to elect three of the six council members and African Americans also are able to elect at least one of the three council seats, then black voters still would have the ability to elect four of the nine council members.

Submission, at 4. To support the prospect of African American success in one at-large position, the City references the prospect of single-shot voting, in which a large preponderance of African American voters would select only one candidate, and a large preponderance of white votes would spread their votes relatively evenly among two or more different candidates. In making this argument, the City relies on estimations rather than detailed election data analysis.

We have analyzed the election data in detail, and have received other analyses from interested persons. As you acknowledge, elections in the City are racially polarized. African American candidates have had, at best, mixed success in multi-seat and other at-large contests. We previously interposed an objection in an April 9, 1985 letter to the City. When the City used a system of six districts and three at-large seats from 1986 through 1997, African American voters had no success in electing candidates of their choice to at-large positions. During that period, all African American candidates lost elections for at-large positions. Only in 1999, on the eve of the change to nine single-member districts, did the first African American candidate win an at-large position on the council. African American voters have succeeded in

subsequent exogenous at-large contests, including Mr. Marshall Pitts' two successful elections as Mayor. Mr. Pitts, however, lost a mayoral election amid racially polarized voting in his most recent race in 2005, and all five African American candidates have been defeated within the City's precincts in at-large elections for the Cumberland County School Board.

After comparing the extremely mixed record of success of African American voters in at-large contests with their uniform success in single-member district contests, I cannot conclude, as I must under Section 5, that the City has met its burden of establishing the absence of a retrogressive effect. Accordingly, I must interpose an objection to the proposed change in method of election for the Fayetteville City Council from nine single-member districts to six single-member districts with three at-large positions, and the resulting 2007 City Council redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted change continues to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Fayetteville plans to take concerning this matter. If you have any questions, you should call Mr. Robert Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

Wan J. Kim
Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 17 2009

James P. Cauley III, Esq.
Rose Rand Wallace
P.O. Drawer 2367
Wilson, North Carolina 27894-2367

Dear Mr. Cauley:

This refers to the change to nonpartisan elections, with a plurality-vote requirement, for the City of Kinston in Lenoir County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your response to our June 10, 2009, request for additional information on June 16, 2009; additional information was received on August 4, 2009.

We have carefully considered the information you have provided, as well as information from other interested parties. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed change "neither has the purpose nor will have the effect" of denying or abridging the right to vote on account of race, color or membership in a language minority group. As discussed further below, I cannot conclude that the city has sustained its burden of showing that the proposed changes do not have a retrogressive effect. Therefore, based on the information available to us, I object to the voting changes on behalf of the Attorney General.

According to the 2000 Census, the City of Kinston has a total population of 23,688 people, of whom 14,837 (62.6%) are African-American. The total voting age population is 17,906, of whom 10,525 (58.8%) are African-American. The American Community Survey for 2005-2007 estimates the total population to be 22,649, of whom 14,967 (66.6%) are African-American. As of October 31, 2008, the city has 14,799 registered voters, of whom 9,556 (64.6%) are African-American.

Although black persons comprise a majority of the city's registered voters, in three of the past four general municipal elections, African Americans comprised a minority of the electorate on election day; in the fourth , they may have been a slight majority. For that reason, they are viewed as a minority for analytical purposes. Minority turnout is relevant to determining whether a change under Section 5 is retrogressive. *Hale County v. United States,* 496 F.Supp 1206 (D.D.C.).

Black voters have had limited success in electing candidates of choice during recent municipal elections. The success that they have achieved has resulted from cohesive support for candidates during the Democratic primary (where black voters represent a larger percentage of the electorate), combined with crossover voting by whites in the general election. It is the partisan makeup of the general electorate that results in enough white cross-over to allow the black community to elect a candidate of choice.

This small, but critical, amount of white crossover votes results from the party affiliation of black-preferred candidates, most if not all of whom have been black. Numerous elected municipal and county officials confirm the results of our statistical analyses that a majority of white Democrats support white Republicans over black Democrats in Kinston city elections. At the same time, they also acknowledged that a small group of white Democrats maintain strong party allegiance and will continue to vote along party lines, regardless of the race of the candidate. Many of these white crossover voters are simply using straight-ticket voting. As a result, while the racial identity of the candidate greatly diminishes the supportive effect of the partisan cue, it does not totally eliminate it.

It follows, therefore, that the elimination of party affiliation on the ballot will likely reduce the ability of blacks to elect candidates of choice. Black candidates will likely lose a significant amount of crossover votes due to the high degree of racial polarization present in city elections. Without party loyalty available to counter-balance the consistent trend of racial bloc voting, blacks will face greater difficulty winning general elections. Our analysis of election returns indicates that cross-over voting is greater in partisan general elections than in the closed primaries. Thus, statistical analysis supports the conclusion that given a change to a non-partisan elections, black preferred candidates will receive fewer white cross-over votes.

The change to nonpartisan elections would also likely eliminate the party's campaign support and other assistance that is provided to black candidates because it eliminates the party's role in the election. The party provides forums for black candidates to meet with voters who may otherwise be unreachable without the party's assistance. In addition, the party provides campaign funds to candidates, without which minority candidates may lag behind their white counterparts in campaign spending.

Removing the partisan cue in municipal elections will, in all likelihood, eliminate the single factor that allows black candidates to be elected to office. In Kinston elections, voters base their choice more on the race of a candidate rather than his or her political affiliation, and without either the appeal to party loyalty or the ability to vote a straight ticket, the limited remaining support from white voters for a black Democratic candidate will diminish even more. And given that the city's electorate is overwhelmingly Democratic, while the motivating factor for this change may be partisan, the effect will be strictly racial.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. *Georgia* v. *United States*, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change to nonpartisan elections, with a plurality vote requirement.

Under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, unless and until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the change to nonpartisan elections, with a plurality vote requirement, continues to be legally unenforceable. *Clark* v. *Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the city plans to take concerning this matter. If you have any questions, please call Mr. J. Eric Rich (202-305-0107), an attorney in the Voting Section.

Sincerely,

Loretta King/SB

Loretta King
Acting Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Washington, D.C. 20530

APR 3 0 2012

Robert T. Sonnenberg, Esq.
In-house Counsel
Pitt County Schools
1717 West Fifth Street
Greenville, North Carolina 27834

Dear Mr. Sonnenberg:

This refers to Session Law 2011-174 (SB 260) (2011), which reduces the number of school board members from twelve to seven; changes the method of election (to six members elected from single-member districts, and one member elected at large); reduces the terms of office from six years to four years; and provides an implementation schedule for these changes, for the Pitt County School District in Pitt County, North Carolina. These changes were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received additional partial responses to our August 26, 2011, request for additional information, October 24, 2011, follow-up request, and December 30, 2011, follow-up request, on October 27 and December 7, 21, and 28, 2011; your submission was complete on March 1, 2012.

With regard to the change in the terms of office from six years to four years, the Attorney General does not interpose any objection. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965*, 28 C.F.R. 51.41.

With regard to the remaining changes, we have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the school district's previous submissions. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing those proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. *Georgia* v. *United States*, 411 U.S. 526 (1973); 28 C.F.R. 51.52(c). For the reasons discussed below, I cannot conclude that the school district's burden under Section 5 has been sustained as to the reduction in the number of school board members from twelve to seven; the change in the method of election from a twelve-member board elected from six double-member

districts to a seven-member board elected from six single-member districts and one member elected at large; and the implementation schedule. Therefore, on behalf of the Attorney General, I must object to those changes.

The Pitt County School District is coterminous with Pitt County. The school district currently is governed by a twelve-member board, elected from six double-member districts, which are coterminous with the six county commission districts. School board elections are staggered such that one seat in each of the six double-member districts is up for election in each set of board elections. Terms of office for school board members are six years, and the next elections for the board are scheduled for 2014 and 2016. The Department has interposed no objection under Section 5, on December 30, 2011, to the 2011 redistricting plan for the school board (and county commission).

Session Law 2011-174 (SB 260) (2011) reduces by half the number of members elected from districts, from twelve to six, and would add an at-large member, for a total board size of seven members; shortens the terms for school board members from six years to four years; and provides an implementation schedule for these changes. The positions of all six of the current board members whose terms expire in 2014 will be eliminated at the expiration of their terms. The only board member elections in 2014 will be for the new at-large position and to fill the remainder of the term for one of the District 1 seats, in which a vacancy has been filled by appointment, each of which will be for a two-year term. In 2016, all seven remaining seats will be up for election.

Available information indicates that since 2009, the school board has addressed and rejected the idea of reducing the number of school board members on three separate occasions; the most recent instance was in February 2011. Local legislators who were present at the February 2011 meeting informed the board that if it did decide to seek such a change through local legislation, it would need to send a resolution to the local legislative delegation making that request. Although the school board has never made that request, a state senator who is a member of the Pitt County legislative delegation subsequently introduced the bill that led to the changes before us. That senator informed us that the bill incorporated a proposal he received from the Pitt County-Greenville Chamber of Commerce, and that he supported a smaller school board because each representative would be responsible for a larger population and because smaller elected bodies have less rancor in decision-making. He also informed us that he disliked the idea of having a school board without an at-large member.

We turn first to our analysis of the effect of the changes to the method of election. According to the 2010 Census, Pitt County's total population is 168,148, of whom 57,956 (34.5%) are black. Its voting age population is 130,350, of whom 41,470 (31.8%) are black. The county's elections are generally racially polarized. District 1 has a black voting age population majority of 50.6 percent. District 1 for both the school board and county commission has historically operated as an ability-to-elect district since at least 2002. The same is not true for District 2. Although District 2 has a majority black total population, its voting age population is 48.4 percent black. Throughout this same time period, District 2 was majority-black in voter

registration, black voters made up the majority of the electorate in 2004 and 2008, and all the black candidates were the candidates of choice of black voters. Nonetheless, black voters in District 2 have not demonstrated an ability to elect their candidates of choice in either county commission or school board elections, with the sole exception of the 2008 election, which was marked by an unusually high turnout of black registered voters. As a consequence, there are three black members currently on the school board, two elected from District 1 and one elected from District 2.

Our analysis has therefore determined that, as a result of the voting patterns that exist in the county, the benchmark plan provides black voters with the ability to elect candidates of their choice to two of twelve seats (16.7%). The proposed change would reduce by half the number of members elected from districts, from twelve to six, and would add an at-large member, for a total board size of seven members. Given the racially polarized voting patterns in the county and the fact that African Americans have never elected a candidate of choice to a county-wide office, the at-large seat will not be an ability-to-elect seat. Therefore, the addition of the at-large seat would decrease the representation of minority-preferred officials on the school board from two of twelve (16.7%) to one of seven (14.3%). Because the net effect of the changes currently before us is to reduce the proportion of positions on the board to which black voters can elect preferred candidates from 16.7 to 14.3 percent, these changes are retrogressive.

In addition, the school board has failed to show that it could not have adopted a non-retrogressive change to accomplish the stated goal of reducing the size of the board. For example, the school board could simply have changed to a system that elects one board member rather than two from each district, which would have a resulted in a non-retrogressive six-member board. As another example, the Pitt County Board of Commissioners consists of nine members, with six members elected from single-member districts that are coterminous with the school board districts, and three additional members elected from super-districts that combine the existing districts in pairs. A school board plan that incorporated that structure would have resulted in a board with two ability-to-elect districts, which, when compared to the benchmark method, would not have been retrogressive. Indeed, in presenting its proposals for a smaller school board to the state senator, the Chamber of Commerce proposed a nine-member plan as one alternative. The only reasons given by the senator for proposing a seven-member plan instead were that he was familiar with county governance and small boards, felt that a smaller board was better, and disliked the idea of having a board without an at-large position.

With respect to the school district's ability to demonstrate that these changes were adopted without a prohibited purpose, the starting point of our analysis is the framework established in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). There, the Court provided a non-exhaustive list of factors that bear on the determination of discriminatory purpose, including the impact of the action on minority groups; the historical background of the action; the sequence of events leading up to the action or decision; the legislative or administrative history regarding the action; departures from normal procedures; and evidence that the decision-maker ignored factors it has otherwise considered important or controlling in similar decisions. *Id.* at 266-68.

As an initial matter, the process for enacting Session Law 2011-174 departed dramatically from the normal procedure for local legislation. In the ordinary course, a local body or board passes a resolution on a matter and sends it to the local legislative delegation asking that the matter be enacted. Nothing like this procedure happened here; to the contrary, the school board addressed and rejected this matter three times over the course of three years, offering no resolution calling for the local legislative delegation to act. Yet, despite the absence of such a request, the state senator introduced the legislation. The manner in which the change was adopted was a complete departure from the normal procedures.

The historical background raises additional concerns, because Pitt County has a history of challenges to at-large positions under the Voting Rights Act. *See* May 5, 1986, Objection to Chapter 2, H.B. 29 (1985) and Chapter 495, H.B. 1397 (1986); *Pitt County Concerned Citizens for Justice* v. *Pitt County*, No. 87-cv-129 (E.D.N.C. 1988) (challenge under Section 2 of the Voting Rights Act resolved by consent decree). The addition of an at-large seat in the proposed plan, and the effect it would have on minority voters' ability to elect, is particularly noteworthy given this history.

Finally, the changes will have a discriminatory effect on minority voters, as indicated by our conclusion that the school district cannot meet its burden of showing that the reduction in seats and the addition of an at-large member will not have a retrogressive impact on African Americans. As noted above, this discriminatory effect was not necessary to achieve the stated goal of reducing the size of the school board. In addition, the reduction in seats would be accomplished through a proposed implementation schedule that removes six members of the board through cancelling all school board elections for 2014 except for the new at-large seat and the special election to fill the District 1 vacancy. Because every black member of the school board is currently serving a term that expires in 2014, this implementation schedule would have the consequence of simultaneously eliminating the seats of two of the three current black board members.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor will have a discriminatory effect. *Georgia* v. *United States*, 411 U.S. 526 (1973); 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance.

In reaching this conclusion, let us underscore that we are not concluding that the school board and the state cannot enact local legislation that would reduce the size of the school board and otherwise change the method of election for those members. Rather, if the school board and the state choose to enact such legislation, they must do so in a manner that comports with the Voting Rights Act. As noted in this letter, our review indicates that the board had a number of options to accomplish its stated goal of reducing the number of board members while also complying with Section 5, whether through the method of election used by the nine-member Pitt

County Board of Commissioners, or simply through a six-member board that elects one rather than two members from each district. We expect other non-retrogressive alternatives can be identified as well.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the United States District Court for the District of Columbia is obtained, the submitted changes continue to be legally unenforceable. *Clark* v. *Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10. To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that the Pitt County School Board plans to take concerning this matter. If you have any questions, you should contact Robert S. Berman (202/514-8690), a deputy chief in the Voting Section.

Sincerely,

Thomas E. Perez
Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 12, 2001

Francis I. Cantwell, Esq.
Regan, Cantwell and Stent
P.O. Box 1001
Charleston, South Carolina 29402

Dear Ms. Cantwell:

This refers to the 2001 redistricting plan for the City of Charleston in Berkeley and Charleston Counties, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your most recent responses to our August 3, 2001, request for additional information on August 7, 8, 13, and 15, 2001.

We have carefully considered the information you have provided, as well as information in our files, Census data, and information and comments from other interested persons. According to the 2000 Census, black persons represent 34.0 percent of the city's total population and 30.1 percent of its voting age population.

The Charleston City Council consists of a mayor elected at large and 12 councilmembers elected from single-member districts. According to the 2000 Census, six districts are majority black in total population, ranging from 56.0 to 70.6 percent. Five of these districts are also majority black in voting age population. The one exception is District 2, which has a 48.1 percent black voting age population.

Upon its implementation, the proposed redistricting plan would decrease the number of majority-minority districts to five, a result which our analysis of demographic changes in Charleston indicates is unavoidable and necessary to comply with the constitutional requirement of one person-one vote.

However, it appears that no constitutional or legal imperative required that the area comprising existing District 2 be combined with District 4 in a revised District 4. Our concerns regarding the proposed combination of these districts stems from the rapid population growth projected for Daniel Island, which is located in proposed District 4. According to information the city has provided, significant residential development in this area is already under way. The city estimates that the total number of building permits over the next five years in the Berkeley County portion of the city is 1,131. Using the 2.75 persons per household figure recommended by the city to compute the population projections for the Berkeley County portion, the future additional total population would be 3,110. As of July 1, 2001, the Berkeley County Voter Registrar recorded the City of Charleston portion of Cainhoy Precinct as having a total of 567 registered voters, of whom only 8 (1.4%) are black.

Further, as you have conceded, it is likely that the dwellings on Daniel Island (primarily townhouses and single-family homes) will have mostly white residents in the future considering that the lowest priced townhouses are expected to cost approximately $160,000.

The city further estimates that 206 housing units in the Cainhoy area may cost less than $100,000, and possibly 40 percent of an anticipated 300-unit apartment complex would have reduced rents and be affordable for minorities. Our information is that while not all the prices of homes in the Cainhoy area (northeast of Daniel Island, and included in proposed District 4) have been finalized many of the designated low-income housing units in Cainhoy will not in fact be affordable for minorities in the area.

Further, while proposed District 4 may continue to be a district in which minority voters have an equal opportunity to elect a candidate of their choice in the next council election, "Section 5 looks not only to the present effects of changes but to their future effects as well." Reno v. Bossier Parish School Board, 528 U.S. 320, 340 (2000), citing City of Pleasant Grove v. United States, 479 U.S. 462, 471 (1987). The available information on demographic changes and the continued presence of racial bloc voting in city elections, indicates that in a matter of only a few years, proposed District 4 will no longer be a district in which minority voters will be able to elect a candidate of their choice.

Future retrogression in minority voting strength in District 4 is neither required nor inevitable. Our analysis indicates that future retrogression in District 4 could be minimized by adjusting the district's boundaries. One such slightly altered plan discussed in our August 13, 2001, meeting in Washington would place Daniel Island in a majority white district and, in exchange, a residential area that is already well established could be placed in District 4. Such a plan could maintain minority voting strength in District 4 at its current level for a significant period of time. The city officials stated that they considered such a plan but did not choose it because it conflicts with some of the city's redistricting goals, such as "neighborhood cohesiveness and maintaining constituent consistency." These reasons for not pursuing such an alternative plan are not persuasive since the existing plan already separates neighborhoods (downtown and on Daniel Island) and divides the portion of the city in Berkeley County between three city council districts that are each mainly on a separate land body.

We believe that a slightly altered plan would not be in conflict with the city's redistricting goals as they have been presented to us in your June 1, 2001, submission letter or as they are reflected in the city's existing redistricting plan. However, if the city believes that such an altered plan conflicts with the city's redistricting goals, we note that "compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria. For example, criteria which require the jurisdiction to make the least change to existing district boundaries, follow county, city or precinct boundaries, protect incumbents, preserve partisan balance, or in some cases require a certain level of compactness of district boundaries may need to give way to some degree to avoid retrogression." See Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412 (Jan. 18, 2001) (copy enclosed).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 redistricting plan.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Charleston plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), Special Section 5 Counsel in the Voting Section.

Sincerely,

R. Alex Acosta
Acting Assistant Attorney General
Civil Rights Division

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

NOV 2 2001

John B. Duggan, Esq.
Love, Thornton, Arnold & Thomason
P.O. Box 449
Greer, South Carolina 29652-0449

Dear Mr. Duggan:

This refers to the 2001 redistricting plan for the City of Greer in Greenville and Spartanburg Counties, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our August 20, 2001, request for additional information through October 17, 2001. We have considered carefully the information you have provided, as well as census data, and comments and information from other interested parties. Based on the information available to us, I am compelled to object to the submitted redistricting plan on behalf of the Attorney General.

According to the 2000 Census, the City of Greer has a population of 16,843, of whom 19.7 percent are black and 8.2 percent are Hispanic. The demographic data indicates that the city's black population percentage has declined since the previous decennial census. As a result, we understand that it is no longer feasible to devise a redistricting plan, which complies with one-person, one-vote standards, and which contains two districts in which minority voters can elect candidates of choice. However, as set forth below, the sole remaining majority minority district in the proposed plan will not continue to allow minority voters to elect candidates of their choice. As a result, the plan is retrogressive. See, Guidance Concerning Redistricting and Retrogression under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, 66 Fed. Reg. 5411. 5413 (Jan. 18, 2001).

Proposed District 2, the majority minority district in the proposed plan, includes much of the area previously included in District 1. Thus, the voting patterns of former District 1 are particularly relevant to our determination of future voting behavior in District 2, which the city presents as the district in which minority voters will retain the ability to elect candidates of their choice. Accordingly, we have examined elections for both municipal elections in Greer as well as other elections in which voters in Districts 1 and 2 participated. Our analysis indicates that voting in these elections in those areas are marked by a pattern of racial polarization.

An analysis of the 1995 and 1999 election returns for District 1 shows a significant correlation between the demographics of the area, the race of the voters, and the race of the candidate. In the 1995 election, Perry Dennis received 98.8 percent of his votes from Spartanburg County, which is comprised of 95.6 percent of the total registered black voters of District 1. Conversely, Mr. Dennis received 1.16 percent of his votes from Greenville County where black voters comprised 4.37 percent of the total registered voters in District 1. The 1999 election data also indicate strong racial bloc voting tendencies. Mr. Dennis received 91.6 percent of his votes from the portion of District 1 in Spartanburg County, which had 98.4 percent of the district's total black registered voters. Conversely, 8.3 percent of his total votes were from the Greenville portion of the district which had 1.6 percent of the district's total black registered voters.

We also note that in the 1999 election, the candidate supported by the minority community won election by only 14 out of 158 votes cast. At that time, the district was approximately 59 percent black. Further, our analysis of recent election returns demonstrates a significant disparity in the turnout rates of white and black voters. For example, our analysis of a 1994 election showed that white voters turned out at a rate of 63 percent, whereas black voters turned out at a rate of 30 percent. Given this pattern of electoral behavior, black voters will lose the opportunity to elect their candidate of choice in District 2. Accordingly, we have concluded that the city has not carried its burden of establishing that its redistricting plan would not lead to retrogression in the ability of minority to exercise their electoral franchise.

In addition, the city has failed to meet its burden of establishing an absence of a purpose to retrogress minority voting strength in the adoption of the plan. It appears that the city council was aware that the minority elected officials and community were deeply concerned that at least one remaining district be maintained in which minority voters would have a meaningful opportunity to elect their candidates of choice. Yet, the city's actions do not seem to reflect that it was trying to be responsive to these concerns.

During the redistricting process the city appears to have been more responsive to the concerns of white individuals than to the concerns expressed by minorities. For example, in the first proposed plan, created by the state redistricting office, a white incumbent was drawn out of his district, and the area of Burgiss Hills, a virtually all-white area, was drawn into the proposed minority District 1. When white citizens raised concerns about these changes the city took immediate action to address those concerns, and the resulting plan was the one ultimately adopted. Yet the city quickly rejected alternative redistricting plans supported by the minority community.

The city's asserted reasons for dismissing the minority-preferred plans, which included a stronger minority district, appear inconsistent with the standards applied to the plan eventually adopted by the city. First, the city contends that its proposed plan was necessary to align certain communities of interest. Yet, some actions taken in furtherance of that goal appear instead to split communities. For example, the city claims it was important to pair Greer and Victor Mills, two non-adjacent areas that previously had never been in the same district. In the course of making this change the city split Victor Mills into proposed Districts 2 and 3, thereby disrupting a recognized and existing community of interest.

Similarly, claims that the minority preferred plan would violate the principles of the Shaw v. Reno line of cases were exaggerated. The minority district set forth in the plan preferred by the minority community is in fact more compact and more viable than the one in the submitted plan.

Finally, the alternative plans rejected by the city demonstrate that it is possible to draw a plan that meets the city's legitimate redistricting criteria while including a district in which minority voters will continue to have the opportunity to elect their candidates of choice. Given the concerns discussed above about the viability of District 2 under the proposed plan, the presence of these alternative plans is a vital factor in our decision.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Greer plans to take concerning this matter. If you have any questions, you should call Ms. Judybeth Greene (202-616-2350), an attorney in the Voting Section. Refer to File No. 2001-1777 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 27, 2002

Mr. Charles T. Edens
Chairperson, County Council
13 East Canal Street
Sumter, South Carolina 29150

Dear Mr. Edens:

This refers to the 2001 redistricting plan for Sumter County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our March 12, 2002, request for additional information on April 29, 2002.

We have considered carefully the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the county's previous submissions. Based on our analysis of the information available to us, I am compelled to object to the submitted redistricting plan on behalf of the Attorney General.

The 2000 Census indicates that Sumter County has a population of 104,646, of whom 46.6 percent are black. The county council consists of seven members elected from single-member districts to serve four-year, staggered terms.

Under 2000 Census data, four of the seven districts in the current, or benchmark, plan have both total and voting-age populations that are majority black. In three of these four, black voters will continue to have the ability to elect candidates of their choice. Our analysis, however, shows that this is not true for the fourth district, District 7. Under the benchmark plan, black voters in that district have the ability to elect their candidates of choice, and they will not have that same ability under the proposed plan, which decreases the black total population by 8.7 percentage points to 54.2 percent and the black voting-age population by 9.6 percentage points to 49.3 percent.

Our analysis shows that elections within District 7 are marked by a pattern of racially polarized voting. Moreover, we analyzed several county-wide elections to determine whether black voters would have the present ability to elect candidate of choice under the benchmark plan District 7. We determined that, while under the benchmark plan black voters did indeed have the ability to elect a candidate of choice, under the proposed plan they would not; analysis of two prior elections demonstrates that under District 7 as configured under the proposed plan, the black candidate of choice would lose, or at best win by an extremely narrow margin. Accordingly, the implementation of the proposed plan will result in a retrogression in the minority voters effective exercise of their electoral franchise.

This retrogression was avoidable. Our analysis of the information submitted indicates that the reduction of the black population percentage in District 7 was not required to comply with the county's stated redistricting criteria. First, the district had the lowest deviation of all districts and did not require any modification. Second, the county's own consultant presented an alternative plan, Version 1, which satisfied the county's initial redistricting criteria and maintained the demographics of the benchmark district.

A proposed change has a discriminatory effect when it will "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 125, 141 (1976). If the proposed plan materially reduces the ability of minority voters to elect candidates of their choice to a level less than what they enjoyed under the benchmark plan, preclearance must be denied. State of Georgia v. Ashcroft, 195 F.Supp 2d. 25 (D.D.C. 2002). In Texas v. United States, the court held that "preclearance must be denied under the 'effects' prong of Section 5 if a new system places minority voters in a weaker position than the existing system." 866 F.Supp. 20, 27 (D.D.C. 1994).

With respect to the county's ability to demonstrate that the plan was adopted without a prohibited purpose, as noted above the retrogressive effect was easily avoidable. The county was not compelled to redraw the district, and even if it wished to do so, the county was presented with an alternative that met all of its legitimate criteria while maintaining the minority community's electoral ability in District 7, an alternative the county rejected. Moreover, it appears that during the redistricting process the county council explicitly decided to pursue a "3-3-1" plan, i.e., to eliminate one of the four existing majority

minority districts in favor of a "neutral district," more similar to the county's redistricting configuration after implementation of the 1992 redistricting plan. In these circumstances, we cannot conclude that the county will be able to sustain its burden, as it must, that the action in question was not motivated by a discriminatory intent to retrogress.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Sumter County plans to take concerning this matter. If you have any questions, you should call Ms. Judith Reed (202-305-0164), an attorney in the Voting Section. Refer to File No. 2001-3865 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

SEP 3 2002

C. Havird Jones, Jr., Esquire
Senior Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549

Dear Mr. Jones:

This refers to Act R.192 (2002), which provides the redistricting plan, the method of staggering terms, and the implementation schedule for the Union County School District in Union County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our June 17, 2002, request for additional information through August 20, 2002.

We have carefully considered the information you have provided, as well as information in our files, census data, and information and comments from other interested persons. In light of the considerations discussed below, I cannot conclude that your burden under Section 5 of the Voting Rights Act has been sustained in this instance. Therefore, on behalf of the Attorney General, I am compelled to object to the 2002 redistricting plan.

The 2000 Census indicates that Union County School District has a population of 29,881, of whom 9,291 (31.1%) are black persons. The board of trustees consists of nine members elected from single-member districts to four-year staggered terms. Elections are nonpartisan, plurality-win contests conducted at the same time as the general election in even-numbered years. Under 2000 Census data, two of the nine districts in the benchmark plan have both total and voting-age populations that are majority black, Districts 1 and 7. Available information is that prior to the adoption of the benchmark plan in 1989, no black candidates had been elected to the board of trustees. Since the 1989 plan was implemented in 1990, our analysis indicates that Districts 1 and 7 have often elected candidates of choice for black voters to the board of trustees. The proposed plan would drop District 1 by roughly four points in the black share of the total and voting age population, and would drop

District 7 by roughly seven points in the black share of the total and voting age population.

Our review of the benchmark and proposed plans, as well as alternative plans introduced in the legislature, suggests that the magnitude of the reductions in black voting age population percentages in Districts 1 and 7 in the proposed plan was neither inevitable nor required by any constitutional or legal imperative; alternative redistricting approaches available to the State avoided significant reductions in black voting strength while adhering substantially to the State's redistricting goals as presented in your submission. The State's failure to account fully for not considering these alternatives implies an intent to retrogress. Further, should the State believe that such an altered plan conflicts with its redistricting goals, we note that "compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria." Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412 (Jan. 18, 2001).

Also revealing is the fact that, in contrast to the process which led to the 1989 benchmark plan, the proposed plan here was developed without any formal public hearings in the county, and without any opportunity for black members of the local board of trustees and the local black community to voice what we understand to be considerable concerns regarding the plan, resulting in an atmosphere of secrecy. Moreover, the State failed fully to comply with our repeated requests for further information concerning electoral contests between black and white candidates, and for certain information omitted from the original submission, including the transcript of the one legislative debate in which the potentially retrogressive effect of the submitted plan was discussed.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Beer v. United States, 425 U.S. 125 (1976); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Analysis of the question of whether the proposed plan is motivated by an intent to retrogress is guided by the factors set forth in Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977).

In light of the considerations discussed above, I cannot conclude that the State has sustained its burden that the proposed plan was not motivated by a discriminatory intent to cause a retrogression in minority voters' effective exercise of the electoral franchise. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan for Union County School District.

Under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Because the change in the method of staggering terms and the implementation schedule are dependent upon the objected-to redistricting plan, it would be inappropriate for the Attorney General to make a preclearance determination on them. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of South Carolina plans to take concerning the redistricting for the Union County School District. If you have any questions, you should call Mr. Chris Herren (202-514-1416), an attorney in the Voting Section. Refer to File No. 2002-2379 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 9, 2002

Mr. C. Samuel Bennett II
City Manager
P.O. Drawer 748
Clinton, South Carolina 29325

Dear Mr. Bennett:

This refers to four annexations (adopted on September 20, 1993, June 5 and August 7, 1995, and December 3, 2001), and their designation to Ward 1 of the City of Clinton in Laurens County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our July 29, 2002, request for additional information through October 31, 2002. We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the city's previous submissions.

The Attorney General does not interpose any objection to the annexations themselves; however, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection to these changes comes to our attention during the remainder of the sixty-day review period. See 28 C.F.R. 51.41 and 51.43.

As discussed further below, however, I cannot conclude that the city's burden under Section 5 has been sustained with respect to the designation of the annexations to Ward 1 of the city. Therefore, on behalf of the Attorney General, I must object to the designation of the annexations.

Under Section 5, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States,

411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52.

According to the 2000 Census, the City of Clinton had a total population of 8,091, of whom 3,074 (38.0%) are black persons. We understand the city has challenged the official counts for the 2000 Census, including those for the Lydia Mills annexation that indicate 584 persons, of whom 144 (24.7%) are black, reside in that area. Rather, the city contends that the area contains approximately 700 persons, of whom 30 percent are black. However, the difference in the statistical effect of the annexations caused by the use of one set of data or the other is relatively negligible. Using census data, the annexations result in a drop in the city-wide black population percentage to 37.1 percent. Using the city's estimates, the drop is slightly less, down to 37.4 percent. The slight difference caused by the use of one set of data or the other is also true with respect to Ward 1. Using the census data, the minority population percentage decreases 9.3 percentage points from 59.3 percent to 50.0 percent. Using the city's estimate, it decreases 9.0 percentage points from 59.3 percent to 50.3 percent. Moreover, regardless of which data are used, the result of the proposed designation of the annexations to Ward 1 results in lowering the black voting age population in the ward to less than 50 percent.

The city is governed by a six-member council and a mayor, who votes on all matters brought before the council. The councilmembers are elected from wards to serve four-year, staggered terms, while the mayor is elected at large. Our analysis of local election returns, including county and municipal elections conducted between 1992 and 2000, confirms the presence of racial bloc voting in the City of Clinton, such that there are three wards (Wards 1, 2, and 3) in which black residents currently have the ability to elect a candidate of choice.

The effect of the designation of the annexations to Ward 1 significantly reduces the level of black voting strength in that district, and according to our election analysis, eliminates the ability that black voters currently have to elect their candidate of choice in the district. Concomitantly, the elimination of Ward 1 as a district in which black voters can elect a candidate of choice reduces the level of minority voting strength in the expanded city from three out of seven (42.9 percent) to two out of seven (28.6 percent), while their relative share of the city-wide electorate drops no more than a percentage point to not less than 37 percent.

Before we reached our final determination in this matter, we sought to ascertain whether the elimination of the district as one in which black voters could elect a candidate of choice, and the resulting inability of the electoral system in the expanded city boundaries to reflect minority voting strength, was unavoidable. As part of that analysis, we prepared an illustrative limited redistricting plan that affects only Wards 1 and 2. Our conclusion is that the failure to provide a fair recognition of minority voting strength in the expanded city is avoidable, through either a city-wide or a limited redistricting. We recognize that the city is aware that such redistricting is feasible, and has indicated it expects to redistrict in this manner in the future, but has chosen not to do so at this time.

Where annexations significantly decrease minority voting strength, the reasons for the annexations must be objectively verifiable and legitimate, and the post-annexation election system must fairly reflect the voting strength of the minority community in the expanded electorate. City of Richmond v. United States, 422 U.S. 358 at 371-773 (1975). See also, City of Pleasant Grove v. United States, 479 U.S. 462 (1987); City of Port Arthur v. United States, 459 U.S. 159 (1982).

Here, the reasons for the annexations themselves are objectively verifiable and appear to be legitimate. However, the designation of the annexations to Ward 1 is likely to result in the elimination of representation for a minority community which the submitted data suggest comprise 37 percent of the expanded city, an elimination that was avoidable. Thus, the city has not carried its burden of showing that the post-annexation system will fairly reflect the post-annexation strength of the minority community.

We recognize that there may be some practical reasons for the city wanting to defer its post-2000 redistricting until after its dispute with the Census Bureau concerning the 2000 Census counts is resolved. We believe, and have so indicated to city officials, that under these circumstances, it may be appropriate for the city to withdraw the instant submission until such time as it can devise and present for review a complete redistricting plan with "final" census numbers. Similarly, we have also indicated that a limited redistricting of only Wards 1 and 2, in which the Lydia Mills area is divided between those two wards would allow the city to meet its burden in this instance. However, the city has chosen to continue to seek Section 5 review at this time.

This course of action also raises a concern that, by obtaining preclearance of the designation of these annexations to Ward 1 at this time, the city establishes a benchmark plan of only two viable districts for minority voters against which any future redistricting plan would be measured. Although the city asserts that the annexations will not affect its goal of maintaining three districts with majority black populations when it does decide to redistrict, the city, under a non-retrogression standard, is free to devise a plan that does nothing more than replicate the plan that would be in effect following the annexations: three districts with a majority black total population, but only two in which black voters can elect a candidate of choice.

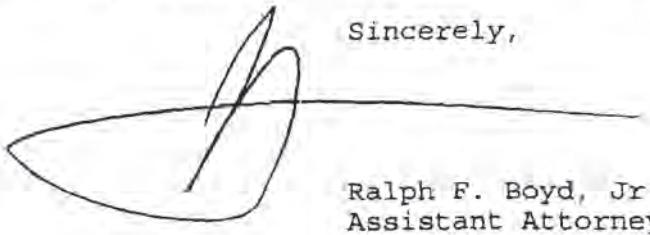
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the designation of the annexations to Ward 1.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the designation of the annexations adopted on September 20, 1993, June 5 and August 7, 1995, and December 3, 2001, to Council Ward 1 continue to be legally unenforceable insofar as they affect voting. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10. Therefore, while residents of the annexed areas may vote for the at-large mayoral position when the election is rescheduled, they may not vote in a city council race until such time as the annexations have been redesignated and the designations precleared under Section 5.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Clinton plans to take concerning this matter. If you have any questions, you should call Mr. Robert P. Lowell (202-514-3539), an attorney

in the Voting Section. Refer to File Nos. 2001-1512 and 2002-2706 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,



Ralph F. Boyd, Jr.
Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

JUN 16 2003

C. Havird Jones, Jr., Esq.
Senior Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549

Keith R. Powell, Esq.
Kenneth L. Childs, Esq.
Childs & Halligan
P.O. Box 11367
Columbia, South Carolina 29211-1549

Dear Messrs. Jones, Powell, and Childs:

This refers to Act No. 416 (2002), which decreases the number of school board members from nine to seven, adopts a districting plan and an implementation schedule, raises the candidate filing fee to $200, authorizes the school board to further raise such fees, and the amended implementation schedule for the Cherokee County School District No. 1 in Cherokee County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our August 19, 2002, request for additional information through May 30, 2003.

The Attorney General does not interpose any objection to the change in candidate qualifying procedures, an increase in the present qualifying fee to $200.00, and the ability of the school board to increase such fees in the future. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). With regard to the board's ability to increase the qualifying fee, Section 5 preclearance is required for any future increase in filing fees.

With regard to the decrease in the number of school board members from nine to seven, we have carefully considered the information you have provided, as well as information from our files, census data, and information and comments from other persons. In light of the considerations discussed below, I cannot conclude that your burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I am compelled to object to the reduction in the size of the school board.

According to the 2000 Census, the school district has a population of 50,728 of whom 10,726 (21.1%) are black. The school board currently consists of nine members, elected in nonpartisan elections from single-member districts to serve four-year, staggered terms. Under 2000 Census data, Districts 2 and 8 in the benchmark plan have black total population percentages of 69.5 and 63.5, respectively.

Under the proposed changes, the size of the board is reduced to seven with black persons constituting a majority of the total population in only one of the seven districts. That district, District 1, has a black total population percentage of 60.6 percent and a black voting age population of 55.5 percent. The plan also contains a district with a significant minority population, District 4, which has a 41.3 percent black total population and a 36.5 percent black voting age population.

A proposed change has a discriminatory effect when it will "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 125, 141 (1976). If the proposed plan materially reduces the ability of minority voters to elect candidates of their choice to a level less than what they enjoyed under the benchmark plan, preclearance must be denied. State of Georgia v. Ashcroft, 195 F.Supp.2d 25 (D.D.C 2002) probable juris. noted, 123 S.Ct 964 (2003). In Texas v. United States, the court held that "preclearance must be denied under the 'effects' prong of Section 5 if a new system places minority voters in a weaker position than the existing system." 866 F.Supp. 20, 27 (D.D.C. 1994).

Our review of electoral behavior indicates that the benchmark plan has consistently provided black voters with the ability to elect candidates of choice in two of the nine districts.

The proposed plan contains only one majority black district, District 1. With a total black population percentage of 60.6, our examination of voting patterns leads us to conclude that black voters will retain the ability to elect candidates of choice. This conclusion is unchanged even considering the pairing of a white and a black incumbent.

However, we can not reach a similar conclusion with regard to the electoral ability of black voters in District 4 of the proposed plan. In your submission, you suggest that this district affords the minority community the potential to elect a candidate of choice because it provides black-preferred candidates support from a "viable cross-over phenomenon." The school board points to the results of the 2002 general elections for Cherokee County Clerk of Court and State Attorney General; both of which featured an interracial contest.

We have also examined the results of recent school board elections. Our regression analysis indicates that, generally, the level of black voter cohesion is lower for school board elections than it is for partisan elections. Similarly, the level of cross-over voting by white residents in Cherokee County is higher in the partisan elections. Since the black voting age population in the proposed district would be only 36.5 percent black, proposed District 4 would not provide black voters with the ability to elect a candidate of choice.

Of equal significance to our conclusion that black voters will not have the ability to elect a candidate of choice in District 4 is the consistent emphasis by the state and school board officials on the ability of the present black incumbent to get re-elected in that district, rather than the ability of the black community to elect a candidate of choice. Our analysis suggests that it is not clear that someone other than the present incumbent would benefit from the "cross-over phenomenon" that has been ascribed to his past candidacies.

Since minority voters would not retain the ability to elect a candidate of choice in District 4, they will only be able to elect a lower proportion of members to the school board. Currently, they are able to elect two of the nine school board members; under the proposed seven-member plan, that ability is reduced to one out of seven. As such, the proposed election plan has a retrogressive effect.

Further, it appears that there is no configuration of seven districts that will not have a retrogressive effect. In contrast, it is possible to devise such a plan with nine

districts, the size of the present board. In fact, the NAACP presented just such a plan to Rep. Phillips, as chair of the Cherokee County legislative delegation, at the May 2002 school board meeting. This nine-member plan conformed to the then-pending legislation that retained the number of officials at nine, the same number supported by a majority of the school board members. Here, the inability to devise any seven-member plan that is not retrogressive means that it is the voluntary change from nine to seven districts that the state has failed to establish will not have the prohibited effect. Beer v. United States, 425 U.S. at 141; Guidance Concerning Redistricting and Retrogression under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412 (January 18, 2001).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change does not have a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Based on the evidence detailed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the reduction in the size of the school board.

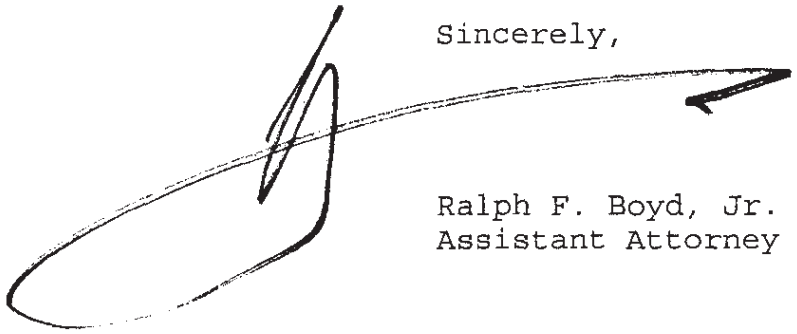
Because the adoption of the districting plan and the change in the initial and amended implementation schedules are dependent upon the objected-to reduction in the number of school board members, it would be inappropriate for the Attorney General to make a preclearance determination on these related changes. See 28 C.F.R. 51.22.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of South Carolina plans to take concerning the reduction in the size of the school board for the Cherokee County School District.

If you have any questions, you should call Ms. Judybeth Greene (202-616-2350), an attorney in the Voting Section. Refer to File No. 2002-3457 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,



Ralph F. Boyd, Jr.
Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 16, 2003

The Honorable H. Bruce Buckheister
Mayor
P.O. Box 399
North, South Carolina 29112

Dear Mayor Buckheister:

I am writing in regards to the two annexations (Ordinance Nos. 2002-07-12 and 2002-08-09) to the Town of North in Orangeburg County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. The Civil Rights Division received your responses to our February 21, 2003, request for additional information through July 18, 2003.

We have carefully considered the information you have provided, as well as information in our files, census data, and information and comments from other interested persons. In light of the considerations discussed below, I cannot conclude that your burden under Section 5 of the Voting Rights Act has been sustained in this instance. Accordingly, on behalf of the Attorney General, I am compelled to object to the annexations.

Regrettably, the town's failure to respond completely to our February 21, 2003, written request for additional information, as well as our followup request, has hampered our review of your submission. The purpose of these requests is to identify the information necessary to assist the Department in its analysis of whether a covered jurisdiction has met its burden of proof under Section 5. You have neither provided these items of information, which are routinely provided in submissions and should be readily available to you, nor indicated that they are not available. In addition, some current and former town officials have declined to speak with us during the course of our review. As a result, we have been forced to analyze your submission based on the information that you did make available and the information we were able to gather on our own.

The submitted annexations are residential and will result in the addition of two white persons of voting age to the town. Our investigation has revealed that part of the reason these residents wanted to annex into town was so they could vote in town elections. Our investigation also obtained information that indicates that the Town of North has been racially selective in its response to both formal and informal annexation requests.

The test for determining whether or not a jurisdiction made racially selective annexations is whether the annexation policies and standards applied to white areas are different than those applied to minority areas. If the standards are not the same or have been applied inconsistently, there is a strong likelihood that the decision not to annex the minority area had a discriminatory purpose. City of Pleasant Grove v. United States, 479 U.S. 462 (1987); Perkins v. Matthews, 400 U.S. 379, 388 (1971). See also Reno v. Bossier Parish School Board, 528 U.S. 320, 339-41 (2000).

The evidence gathered during our review indicates that white petitioners have no difficulty in annexing their property to the town. In fact, they receive help and assistance from town officials. In contrast, there is evidence suggesting that town officials provide little, if any, information or assistance to black petitioners and often fail to respond to their requests, whether formal or informal, with the result that annexation efforts of black persons fail.

The town has made no effort to rebut this evidence nor has it articulated any explanation for failing to provide the same treatment to black and white persons who make formal and informal annexation requests. The town contends it has no formal record of annexation requests made by black persons. However, the credible evidence that we obtained during our investigation revealed the existence of at least one petition for annexation by black persons in the past. That petition was submitted to the town in the early 1990s and included a large number of black persons seeking annexation who reside to the southeast of the town's current boundary. Further, it appears that the granting of this one petition would have resulted in black persons becoming a majority of the town's population. The town has offered no reason why this annexation petition and possibly other requests brought by minorities would be denied or ignored.

Nor has the town provided equal access to the annexation process for white and black persons. The evidence we have gathered suggests that the town has not disseminated information on the annexation process to black persons and has not established a procedure by which black applicants can learn the status of their annexation request. As it appears that

annexation petitions brought by minorities have been denied while those brought by white persons have been accepted, in the absence of clearly defined procedures, race appears to be an overriding factor in how the town responds to annexation requests.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52). The town has failed to carry its burden of proof under Section 5 of showing that it has not engaged in a racially selective annexation policy. Therefore, on behalf of the Attorney General, I must object to the submitted annexations.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the annexations continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of North plans to take concerning this matter. If you have any questions, you should call Mr. Mike Pitts (202-514-8201), an attorney in the Voting Section.

Sincerely,

R. Alexander Acosta
Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

February 26, 2004

C. Havird Jones, Jr., Esq.
Senior Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549

Dear Mr. Jones:

I am writing in regards to Act R.88 (2003), which changes the method of electing the Board of Trustees for the Charleston County School District from nonpartisan to partisan elections, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our August 12 request for additional information on December 31, 2003.

We have carefully considered the information you provided, census data, information in our files, and comments from other interested persons, as well as the federal district court's findings in *United States v. Charleston County*, No. 2:01-0155-23 (D.S.C. March 6, 2003). In light of the considerations discussed below, I cannot conclude that your burden under Section 5 of the Voting Rights Act has been sustained. Therefore, on behalf of the Attorney General, I am compelled to object to Act R.88 (2003).

The Voting Rights Act requires a jurisdiction seeking to implement a proposed change affecting voting to establish that, under the totality of the circumstances, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." *Georgia v. Ashcroft*, 123 S.Ct. 2498, 2511 (2003); *Beer v. United States*, 425 U.S. 130, 141 (1976). Whether a change is retrogressive "depends on an examination of all the relevant circumstances, such as the ability of minority voters to elect a candidate of choice, the extent of the minority group's opportunity to participate in the political process, and the feasibility of creating a nonretrogressive plan." *Georgia*, 123 S.Ct. at 2511. In addition, the jurisdiction must establish that the change was not adopted with an intent to retrogress. *Reno v. Bossier Parish School Board*, 528 U.S. 320, 340 (2000).

Our review of the electoral impact of the proposed change, the views of elected officials at

both the local and state level, including the expressed views of the legislation's sponsors, and the detailed factual findings in *United States v. Charleston County*, demonstrate that the Act is retrogressive. The proposed change would significantly impair the present ability of minority voters to elect candidates of choice to the school board and to participate fully in the political process. In addition, it was enacted despite the existence of a nonretrogressive alternative.

The proposed change would likely eliminate the possibility of plurality victories by requiring head-to-head contests with the winner needing a majority of votes. The *Charleston County* court concluded that partisan, at-large elections in Charleston County impose a "*de facto* majority vote requirement" that "makes it more difficult for the African-American community to employ * * * bullet voting in order to improve their chances of electing candidates of their choosing." *Slip. op.* at 43-44.

In contrast, the court noted that because Charleston school board elections are non-partisan, they can result in numerous candidates running, thus creating the opportunity for single-shot voting and a plurality win by minority-preferred candidates despite the at-large method of election and the prevalence of racially polarized voting. *Id.* at 20-21. The proposed change will impose a *de facto* majority-vote requirement that will make it extremely difficult for minority-preferred candidates to win.

Another significant factor in our determination is the lack of support for the proposed change from minority-preferred elected officials. *See Georgia*, 123 S.Ct. at 2513. Our investigation reveals that every black member of the Charleston County delegation voted against the proposed change, some specifically citing the retrogressive nature of the change. Our investigation also reveals that the retrogressive nature of this change is not only recognized by black members of the delegation, but is recognized by other citizens in Charleston County, both elected and unelected.

In evaluating the submission, we have considered the feasability of creating a non-retrogressive alternative. *Georgia*, 123 S.Ct. at 2511. The governmental interest in implementing partisan elections can be achieved by non-retrogressive means. A switch to partisan elections would not represent a retrogression of minority voting strength if accompanied by a concomitant shift from at-large elections to a fairly drawn single-member districting plan. Indeed, such a non-retrogressive alternative was considered and adopted by the State Senate, but was not taken up by the State House.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. *Georgia v. United States*, 411 U.S. 526 (1973); *see also* "Procedures for the Administration of Section 5" (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Act R.88.

We note that under Section 5 you have the right to seek a declaratory judgment from the

United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. *See* 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. *See* 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, Act R.88 continues to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Charleston County School District plans to take concerning this matter. If you have any questions, you should call Mr. Mike Pitts (202-514-8201), an attorney in the Voting Section.

Sincerely,

R. Alexander Acosta
Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

June 25, 2004

C. Havird Jones, Jr., Esq.
Senior Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549

Dear Mr. Jones:

This refers to Act No. 326 (2002), which adopts numbered posts and a majority vote requirement for Richland-Lexington School District No. 5 in Richland and Lexington Counties. This Act was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our August 9, 2002, request for additional information on October 8, 2002, and April 27, 2004.

We have carefully considered the information you have provided, as well as census data, comments from interested parties, and other information. Under Section 5 of the Voting Rights Act, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race. *See Georgia v. Ashcroft*, 539 U.S. 461 (2003); *Procedures for the Administration of Section 5 of the Voting Rights Act*, 28 C.F.R. 51.52 (c). As discussed below, I cannot conclude that the state's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the adoption of numbered posts and a majority vote requirement for the election of board members of Richland-Lexington School District No. 5.

According to the 2000 Census, the district has a voting age population of 54,473 persons, of whom 7,615 (14%) are black. The most recent registered voter data indicate that there are 48,735 registered voters in the district, of whom 7,141 (14.6%) are black. In the Richland County portion of the school district, the black voting age population is 3,751 (17.5%) and the black registration rate is 19.3%. In the Lexington County portion of the district, the black voting age population is 3,856 (11.7%) and black registration rate is 11.2%. The minority population in the district is growing rapidly, particularly among school age children and particularly in Richland County. According to the South Carolina Department of Education, the district had the greatest percentage change in minority enrollment in the state during the 1990s, with minority student enrollment more than doubling from 1,724 to 4,046.

The benchmark election system consists of seven board members elected at large to staggered, four-year terms. Until 2002, five members were elected from Lexington County and two from Richland County. Acting upon a request from the school board, the state legislature in 2002 moved one seat from Lexington to Richland in response to faster population growth in the latter county. On August 9, 2002, the Attorney General informed the state that he had no objection to the reallocation of seats. This electoral system is the benchmark against which the Attorney General determines whether the state has met its burden of establishing that the proposed changes do not have a discriminatory effect and do not have a discriminatory purpose. *See City of Rome v. United States*, 446 U.S. 156, 183-85 (1980); 28 C.F.R. 51.54(b).

Our electoral analysis indicates that elections for membership on the school board are marked by a pattern of racially polarized voting. Within the context of the racially polarized voting patterns that exist in the district, the electoral changes submitted to the Attorney General operate to prevent black voters from using single-shot voting to elect candidates of their choice.

Almost twenty five years ago, the Supreme Court addressed the application of numbered posts and a majority vote requirement in *City of Rome v. United States*. Rome had a black voter registration level of approximately 15%, slightly less than that of the Richland County electorate here and almost the same as the school district as a whole. The Court held that "the electoral changes from plurality-win to majority-win elections, numbered posts, and staggered terms, when combined with the presence of racial bloc voting and Rome's majority white population and at-large electoral system" results in a prohibited retrogression. 446 U.S. at 183.

The district's electoral history provides telling examples of this effect. The single successful black-preferred minority candidate who won election to the school board in 1992 would not have won had the proposed majority vote requirement been in place.

Sherman Anderson won election to the school board in 1992 by garnering 2,042 of 6,676 votes, or 30.2%. Anderson ran against three candidates, who split the white vote sufficiently to allow him to defeat candidate George Summers by 29 votes. Anderson was the clear first choice of black voters, while the white vote was split, with no candidate receiving more than 39.7% of the white votes.

In addition, under the benchmark method of election, the addition of a third seat to the Richland County portion of the school district would create an additional opportunity for a black-preferred candidate to be elected in those years in which two seats are being contested. If the same results from 1996 were repeated in a year in which the two top vote getters were elected, the minority-preferred incumbent would have been returned to the school board.

With elections every other year, the shift of a seat to Richland County results in two seats being contested in every other election. Under the proposed system, these two seats would be contested as separate elections, rather than the two top vote getters being elected as under the benchmark system.

Similarly, a majority vote requirement would prevent the sort of vote-splitting that led to the election of a minority-preferred board member in 1992. If the 1992 election were repeated, Summers and Anderson would have met in a runoff, where Summers, given the level of racially polarized voting, presumably would have picked up support from the other defeated white candidates.

A voting change has a discriminatory effect if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change with respect to their effective exercise of the electoral franchise). *See e.g., Reno v. Bossier Parish School Board*, 528 U.S. 320, 328 (2000); *Beer v. United States*, 425 U.S. 130, 140-42 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. *See Georgia v. United States*, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the adoption of numbered posts and a majority vote requirement by Act No. 326 (2002).

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted changes continue to be legally unenforceable. *See Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of South Carolina intends to take concerning this matter. If you have any questions, you should call Ms. Judith Reed (202-305-0164), an attorney in the Voting Section.

Sincerely,

R. Alexander Acosta
Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

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

AUG 16 2010

C. Havird Jones, Jr., Esq.
Senior Assistant Attorney General
Rembert Dennis Building, Room 519
1000 Assembly Street
Columbia, South Carolina 29201

Dear Mr. Jones:

This refers to Act R135 (H 4431) (2010), which provides for the temporary transfer of financial authority from the Board of Trustees to a five-member committee appointed by the Fairfield County Legislative Delegation, and Act R136 (H 4432) (2010), which provides for the temporary appointment of two seats on the Board of Trustees by the legislative delegation, for the Fairfield County School District in Fairfield County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your response to our May 10, 2010 request for additional information on June 15, 2010; additional information was received through August 12, 2010.

Act R135

With respect to the changes contained in Act R135, the Attorney General does not interpose an objection. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. 42 U.S.C. 1973c(a); 28 C.F.R. 51.41.

Act R136

We reach a different determination, however, with respect to Act R136. Under Section 5, the submitting authority has the burden of establishing that a proposed change is not motivated by a discriminatory purpose and will not have a retrogressive effect on the ability of minority voters to participate in the political process and elect candidates of choice. *Georgia v. United States,* 411 U.S. 526 (1973); 28 C.F.R 51.52. We have carefully considered the information you have provided, as well as information from other interested parties. As discussed further below, I cannot conclude that the state has sustained its burden of showing that Act R136 will not have a discriminatory effect. Therefore, on behalf of the Attorney General, I object to Act R136.

We are keenly aware that the financial and administrative management of the Fairfield County School Board of Trustees, and the low academic performance of the Fairfield County schools, are matters of serious concern to residents and parents in the district. We appreciate that there must be wide local latitude to implement reforms that promote greater educational opportunity for all of our children.

As the experience of other states demonstrates, there are tools available to address these serious educational challenges without causing a discriminatory effect that violates the Voting Rights Act. A state may adopt legislation incorporating such tools so long as that adoption and implementation complies with the Act, as the Attorney General has previously determined. For example, Chapter 39 of the Texas Education Code provides a graduated series of interventions that the state may take regarding individual school districts to ensure the educational needs of their students. The State of Texas submitted this legislation to the Attorney General for review under Section 5 in the mid-1990s. On December 11, 1995, we informed the state that no objection would be interposed under Section 5 to that enabling legislation and likewise that any intervention taken pursuant to it that affects voting in a local school district also would be subject to review under Section 5. Since that time, the state has relied on those procedures to assist local school districts that are in some form of distress. In each instance that the state has submitted its proposed action, up to and including the dissolution of a school district, the Attorney General has determined that no objection was warranted.

The State of Mississippi has adopted a similar statutory approach to intervention in under-performing local school districts through Miss. Code Section 37-17-13(l) and 37-17-6(11)(b). This structure provides an objective basis for the state's actions, which can include removing all the powers previously held by elected board members. As has been our experience with submissions from Texas, we have reviewed several such state interventions and in none have we interposed an objection under Section 5.

By contrast, Act R136 was adopted through an *ad hoc* local legislation process rather than a uniform statewide approach. This process is neither subject to the traditional legislative scrutiny nor accompanied by legislative hearings or reports. We share the concern expressed by Governor Mark Sanford, who originally vetoed both bills and indicated that the more appropriate approach would be for the electorate in Fairfield County to express its will through the ballot.

In the absence of a state statute similar to those in either Mississippi or Texas, it appears that state education officials in South Carolina have taken action with regard to only one such school district in recent years. The county legislative delegation advises that it is for this reason that it turned to local legislation to effectuate the changes it desired in the school district. The county's legislative delegation has represented that they have been aware for several years of the district's poor academic record, accusations of financial impropriety against the school board, the perceived ineffective leadership of the school board, the legislators' inability to obtain any assistance from state education officials, and the repeated requests from constituents, both African American and white, for assistance in improving the district's schools, and that these factors prompted the delegation to take the action under review.

In addition, Act R136 operates solely by reducing the proportion of positions for which minority voters can elect candidates of choice on a local elected body. Changes related to voting may not be implemented unless and until the submitting authority establishes that, when compared to that jurisdiction's benchmark standard, practice, or procedure, the proposed change does not diminish the ability of minority voters to participate in the political process. *Beer v. United States*, 425 U.S. 130 (1976). The analysis must measure whether the opportunities of minority voters to participate in the political process and elect candidates of their choice will be "augmented, diminished, or not affected by the change affecting voting." *Id.* at 141.

The Fairfield County School District and Fairfield County have coterminous boundaries. According to the 2000 Census, African Americans comprise 59.0 percent of Fairfield County's total population and 55.6 percent of the county's voting age population. The benchmark method of election consists of seven trustees elected to four-year, staggered terms, with elections held in even-numbered years from seven single-member districts that are coterminous with the districts used to elect the county council.

Act R136 provides for a proposed method of selection that results in the board of trustees being increased in size to nine members, with two new members being appointed, and the remaining seven members being elected from the existing seven single-member districts. Under the proposed plan, the number of districts in which African-Americans voters can elect candidates of choice remains unchanged from the benchmark plan. What has changed is the context in which those members operate. The act adds two board members who will be appointed by the two-member county legislative delegation, and available information indicates that neither member of the legislative delegation is a candidate of choice of minority voters. As a result, the act expands the board's membership by more than a quarter, without a concomitant expansion of the electoral franchise. Act R136 provides that the new appointed members will remain part of the board of trustees for an exceptionally long term of twelve years, until 2022, unless certain performance criteria are met earlier.

As support for its actions here, the state has advised that the addition of two members was the least intrusive of various options that were considered, including replacing the elected board with an all-appointed board or continuing to elect all members of the board, but on a countywide at-large basis, rather than from single-member districts. While those options might indeed be more drastic than the proposed plan, that fact does not obviate the conclusion that the act reduces the proportion of positions on the board to which African Americans can elect representatives of choice, a retrogressive effect prohibited by Section 5. The fact of the matter is that the sole impact of the decision is to reduce the level of electoral influence that African-American voters have on the board.

In sum, the state has not met its burden under Section 5 of proving that the changes affecting voting contained in Act R136 do not have a discriminatory effect. This conclusion is informed by the fact that the action undertaken here is *ad hoc* in nature and, unlike those actions we have reviewed in other circumstances, proceeded in the first instance to employ a drastic intervention of likely very long duration with a specific impact on the electoral influence of African-American voters, rather than starting with alternatives that would have a lesser

retrogressive effect on African-American voting strength. We encourage the state to examine the example of other states, like Texas and Mississippi, that have enacted statewide legislation to address educational deficiencies in local school districts in a uniform and transparent manner.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the United States District Court for the District of Columbia is obtained, Act R136 will continue to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10. Because the Section 5 status of these two state acts are at issue before the Court in *Murphy v. Harrell* (D.S.C.), we are providing a copy of this letter to the Court and counsel of record.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of South Carolina plans to take concerning this matter. If you have any questions, you should call Robert S. Berman (202-514-8690), a Deputy Chief in the Voting Section.

Sincerely,

Thomas E. Perez
Assistant Attorney General

cc: Court and counsel of record in *Murphy v. Harrell* (D.S.C.)