

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STATE OF ALABAMA,)
Office of the Attorney General)
501 Washington Avenue)
P.O. Box 300152)
Montgomery, Alabama 36130-0152)

Plaintiff,)

v.)

CIVIL ACTION NO. _____

ERIC H. HOLDER, JR., in his official)
capacity as the Attorney General of the)
United States,)
U.S. Department of Justice)
950 Pennsylvania Avenue, N.W.)
Washington, D.C. 20530)

Defendant.)

COMPLAINT

The State of Alabama respectfully files this complaint seeking a declaratory judgment pursuant to Section 5 of the Voting Rights Act of 1965 (VRA), 42 U.S.C. § 1973c (2006), and 28 U.S.C. § 2201 (2006), that Alabama Act Nos. 2012-602 and 2012-603, providing for, respectively, the redistricting of Alabama’s State House of Representatives and State Senate districts based on the 2010 Census, “neither ha[ve] the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2)” of the Voting Rights Act of 1965. VRA § 5(a), 42 U.S.C. § 1973c(a). Alternatively, the State seeks a declaratory judgment that either Section 5 of the 2006

amendments to the Voting Rights Act¹ or Sections 4(b) and 5 of the Voting Rights Act, 42 U.S.C. §§ 1973b(b) & 1973c (2006), are unconstitutional and an injunction against their enforcement.

PARTIES

1. Plaintiff State of Alabama is one of the 50 United States of America and brings this action on behalf of itself and its citizens.

2. Defendant Eric H. Holder, Jr., is the Attorney General of the United States and is named in his official capacity. Defendant Holder is charged with certain responsibilities under Section 5 of the Voting Rights Act, including the defense of a Section 5 declaratory judgment action in this Court. Defendant Holder, in his official capacity as Attorney General of the United States, resides in the District of Columbia.

JURISDICTION

3. This action arises under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. This Court has jurisdiction pursuant to Section 14(b) of the Voting Rights Act, 42 U.S.C. § 1973l(b) (2006), and 28 U.S.C. § 1331 (2006).

VENUE

4. Venue is proper in the District of Columbia pursuant to Sections 5(a) and 14(b) of the Voting Rights Act, 42 U.S.C. §§ 1973c(a) & 1973l(b), and 28 U.S.C. § 1391(e)(1)(A) (Supp. V 2011).

¹ Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006 (VRARAA), Pub. L. 109-246, § 5, 120 Stat. 577, 580–81.

THREE-JUDGE COURT

5. Plaintiff requests that a district court of three judges be convened to hear and determine this action pursuant to the last sentence of Section 5(a) of the Voting Rights Act, 42 U.S.C. § 1973c(a), and 28 U.S.C. § 2284 (2006). In accordance with LCvR 9.1, a separate “Application for Three-Judge Court” accompanies this Complaint.

FACTUAL BACKGROUND

6. The State of Alabama is a “covered jurisdiction” based upon determinations made under the first sentence of Section 4(b) of the Voting Rights Act of 1965, 42 U.S.C. § 1973b(b) (2006). *See* 30 Fed. Reg. 9897 (Aug. 7, 1965); 28 C.F.R. pt. 51 app. (2011). The State of Alabama is thus subject to the preclearance requirements of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

7. In 2001, after receiving the results of the 2000 Census, the Alabama Legislature enacted and then-Governor Don Siegelman signed Act No. 2001-729, establishing a redistricting plan for the 105-member Alabama State House of Representatives. That plan contained 27 districts in which African-Americans were in the majority for total population.

8. In 2001, the Alabama Legislature also enacted and then-Governor Siegelman signed Act No. 2001-727, establishing a new districting plan for the 35-member State Senate. That plan contained eight districts in which African-Americans were in the majority for total population.

9. Pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, the State of Alabama submitted Act Nos. 2001-727 and 2001-729 to the United States Department of Justice for preclearance. The Department of Justice did not interpose an objection to either plan, and both were put into effect.

10. Although the State of Alabama seeks preclearance by this Court, it has compiled information in the nature of a preclearance submission to the Department of Justice for each of Act Nos. 2012-602 and 2012-603, which will be provided to the Department of Justice upon request.

State House of Representatives Redistricting

11. On or about February 24, 2011, the State of Alabama received the results of the 2010 Census. When the 2010 Census results were loaded into the plan adopted in Act No. 2001-729, it was clear that the districts were unconstitutionally malapportioned, with an overall population deviation of more than 92%. More specifically, loading the 2010 results into the 2002 State House of Representatives plan showed:

Table H1:

2010 Census Data for 2001 House Districts				
House District No.	2010 Total Pop.	2010 Ideal Population	Deviation from Ideal	Deviation from Ideal (%)
1	47,247	45,521	+1,726	+3.79
2	45,462	45,521	-59	-0.13
3	42,348	45,521	-3,173	-6.97
4	51,181	45,521	+5,660	+12.43
5	48,495	45,521	+2,974	+6.53
6	57,674	45,521	+12,153	+26.70
7	40,956	45,521	-4,565	-10.03
8	42,351	45,521	-3,170	-6.96

Table H1:

2010 Census Data for 2001 House Districts				
House District No.	2010 Total Pop.	2010 Ideal Population	Deviation from Ideal	Deviation from Ideal (%)
9	45,371	45,521	-150	-0.33
10	50,267	45,521	+4,746	+10.43
11	44,104	45,521	-1,417	-3.11
12	45,798	45,521	+277	+0.61
13	39,882	45,521	-5,639	-12.39
14	40,597	45,521	-4,924	-10.82
15	48,965	45,521	+3,444	+7.57
16	40,993	45,521	-4,528	-9.95
17	42,595	45,521	-2,926	-6.43
18	43,784	45,521	-1,737	-3.82
19	42,380	45,521	-3,141	-6.90
20	47,531	45,521	+2,010	+4.42
21	48,999	45,521	+3,478	+7.64
22	48,959	45,521	+3,438	+7.55
23	43,186	45,521	-2,335	-5.13
24	48,127	45,521	+2,606	+5.72
25	64,950	45,521	+19,429	+42.68
26	52,448	45,521	+6,927	+15.22
27	47,288	45,521	+1,767	+3.88
28	40,514	45,521	-5,007	-11.00
29	43,353	45,521	-2,168	-4.76
30	44,979	45,521	-542	-1.19
31	46,434	45,521	+913	+2.01
32	38,800	45,521	-6,721	-14.76
33	43,809	45,521	-1,712	-3.76
34	50,560	45,521	+5,039	+11.07
35	44,612	45,521	-909	-2.00
36	46,065	45,521	+544	+1.20
37	43,958	45,521	-1,563	-3.43
38	44,337	45,521	-1,184	-2.60
39	46,905	45,521	+1,384	+3.04
40	49,653	45,521	+4,132	+9.08
41	73,181	45,521	+27,660	+60.76
42	48,338	45,521	+2,817	+6.19
43	56,056	45,521	+10,535	+23.14
44	48,707	45,521	+3,186	+7.00
45	42,890	45,521	-2,631	-5.78

Table H1:

2010 Census Data for 2001 House Districts				
House District No.	2010 Total Pop.	2010 Ideal Population	Deviation from Ideal	Deviation from Ideal (%)
46	50,398	45,521	+4,877	+10.71
47	48,011	45,521	+2,490	+5.47
48	54,047	45,521	+8,526	+18.73
49	52,014	45,521	+6,493	+14.26
50	55,378	45,521	+9,857	+21.65
51	48,552	45,521	+3,031	+6.66
52	43,159	45,521	-2,362	-5.19
53	35,378	45,521	-10,143	-22.28
54	34,905	45,521	-10,616	-23.32
55	35,572	45,521	-9,949	-21.86
56	41,064	45,521	-4,457	-9.79
57	36,199	45,521	-9,322	-20.48
58	37,443	45,521	-8,078	-17.75
59	32,838	45,521	-12,683	-27.86
60	36,704	45,521	-8,817	-19.37
61	41,422	45,521	-4,099	-9.00
62	55,022	45,521	+9,501	+20.87
63	59,073	45,521	+13,552	+29.77
64	40,427	45,521	-5,094	-11.19
65	38,681	45,521	-6,840	-15.03
66	40,491	45,521	-5,030	-11.05
67	37,878	45,521	-7,643	-16.79
68	36,234	45,521	-9,287	-20.40
69	37,572	45,521	-7,949	-17.46
70	39,253	45,521	-6,268	-13.77
71	38,094	45,521	-7,427	-16.32
72	39,414	45,521	-6,107	-13.42
73	48,266	45,521	+2,745	+6.03
74	41,047	45,521	-4,474	-9.83
75	60,140	45,521	+14,619	+32.11
76	44,894	45,521	-627	-1.38
77	34,998	45,521	-10,523	-23.12
78	30,880	45,521	-14,641	-32.16
79	52,950	45,521	+7,429	+16.32
80	54,900	45,521	+9,379	+20.60
81	43,803	45,521	-1,718	-3.77
82	43,389	45,521	-2,132	-4.68

Table H1:

2010 Census Data for 2001 House Districts				
House District No.	2010 Total Pop.	2010 Ideal Population	Deviation from Ideal	Deviation from Ideal (%)
83	41,039	45,521	-4,482	-9.85
84	41,317	45,521	-4,204	-9.24
85	42,429	45,521	-3,092	-6.79
86	49,071	45,521	+3,550	+7.80
87	46,299	45,521	+778	+1.71
88	56,499	45,521	+10,978	+24.12
89	44,249	45,521	-1,272	-2.79
90	39,991	45,521	-5,530	-12.15
91	49,948	45,521	+4,427	+9.73
92	40,506	45,521	-5,015	-11.02
93	46,741	45,521	+1,220	+2.68
94	59,763	45,521	+14,242	+31.29
95	61,642	45,521	+16,121	+35.41
96	50,198	45,521	+4,677	+10.27
97	35,406	45,521	-10,115	-22.22
98	37,831	45,521	-7,690	-16.89
99	39,791	45,521	-5,730	-12.59
100	55,488	45,521	+9,967	+21.90
101	42,749	45,521	-2,772	-6.09
102	50,860	45,521	+5,339	+11.73
103	40,611	45,521	-4,910	-10.79
104	47,450	45,521	+1,929	+4.24
105	44,279	45,521	-1,242	-2.73

12. Before beginning to draw new district lines, the Legislature's Permanent Joint Committee on Reapportionment promulgated Guidelines for Congressional, Legislative, and State Board of Education Redistricting. In pertinent part, those Guidelines state that any plan that the Committee is to consider must satisfy constitutional one-person, one vote standards, including, among other things, the standard as set forth in *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) (three-judge court), *aff'd mem.*, 542 U.S. 947 (2004). The Guidelines further state, "In or-

der to ensure compliance with the most recent case law in this area and to eliminate the possibility of an invidious discriminatory effect caused by population deviations . . . , in every redistricting plan submitted to the Reapportionment Committee, individual district populations should not exceed a 2% overall range of population deviation.”

13. On May 24, 2012, the Alabama Legislature passed HB19, which establishes new district lines for the State’s House of Representatives.

14. On May 31, 2012, Governor Bentley signed HB19, and that bill has been enrolled as Act No. 2012-602. A copy of Act No. 2012-602 is attached to this Complaint as Exhibit 1. Notwithstanding its adoption, Act No. 2012-602 has not been enforced.

15. The plan established by Act No. 2012-602 contains 28 majority-minority districts, one more than the 2001 plan.

16. The plan established by Act No. 2012-602 satisfies applicable constitutional one-person, one-vote standards.

17. The demographics of the majority-minority House Districts in the plan established by Act No. 2012-602 are as follows:

Table H2:

Act No. 2012-602 Majority-Minority House District Demographics				
House District No.	Act 2012-602 Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 2001 District Using 2010 Census Data (%)	2001 House Total Black Pop. (%)	1993 House Total Black Pop. (%)
19	61.25	–6.90	66.039	66.27
32	60.05	–14.76	59.598	63.93
52	60.13	–5.19	65.848	67.72
53	55.83	–22.28	64.445	66.01
54	56.83	–23.32	63.276	63.95
55	73.55	–21.86	67.772	61.57
56	62.14	–9.79	62.665	63.52
57	68.47	–20.48	62.967	63.90
58	72.76	–17.75	63.518	62.75
59	76.72	–27.86	63.241	63.86
60	67.68	–19.37	64.348	66.22
67	69.15	–16.79	63.447	63.50
68	64.56	–20.40	62.211	63.58
69	64.21	–17.46	65.308	63.29
70	62.03	–13.77	62.827	64.60
71	66.90	–16.32	64.191	66.16
72	64.60	–13.42	60.748	65.36
76	73.79	–1.38	73.309	66.69
77	67.04	–23.12	69.677	71.93
78	69.99	–32.16	72.697	72.37
82	62.14	–4.68	62.663	79.73
83	57.52	–9.85	61.214	64.52
84	52.35	–9.24	52.360	37.81
85	50.08	–6.79	47.863	51.13
97	60.66	–22.22	64.378	65.22
98	60.02	–16.89	64.448	65.72
99	65.61	–12.59	65.250	65.09
103	65.06	–10.79	63.049	65.58

State Senate Redistricting

18. As noted above, on or about February 24, 2011, the State of Alabama received the results of the 2010 Census. When those results were loaded into the plan adopted in Act No. 2001-727, it was clear that the districts were constitutionally malapportioned, with an overall population deviation of more than 52%. More specifically, loading the 2010 Census data into the 2001 State Senate plan showed:

Table S1:

2010 Census Population Data for 2001 Senate Districts				
Senate District No.	2010 Total Pop.	2010 Ideal Population	Deviation from Ideal	Deviation from Ideal (%)
1	135,057	136,564	-1,507	-1.10
2	179,058	136,564	+42,494	+31.12
3	151,168	136,564	+14,604	+10.69
4	123,291	136,564	-13,273	-9.72
5	134,976	136,564	-1,588	-1.16
6	117,045	136,564	-19,519	-14.29
7	148,905	136,564	+12,341	+9.04
8	142,128	136,564	+5,564	+4.07
9	144,554	136,564	+7,990	+5.85
10	125,075	136,564	-11,489	-8.41
11	125,111	136,564	-11,453	-8.39
12	142,431	136,564	+5,867	+4.30
13	132,777	136,564	-3,787	-2.77
14	168,669	136,564	+32,105	+23.51
15	160,461	136,564	+23,897	+17.50
16	149,527	136,564	+12,963	+9.49
17	157,178	136,564	+20,614	+15.09
18	112,472	136,564	-24,092	-17.64
19	109,165	136,564	-27,399	-20.06
20	107,375	136,564	-29,189	-21.37
21	140,682	136,564	+4,118	+3.02
22	137,373	136,564	+809	+0.59
23	111,939	136,564	-24,625	-18.03
24	118,832	136,564	-17,732	-12.98
25	157,932	136,564	+21,368	+15.65
26	120,666	136,564	-15,898	-11.64

Table S1:

2010 Census Population Data for 2001 Senate Districts				
Senate District No.	2010 Total Pop.	2010 Ideal Population	Deviation from Ideal	Deviation from Ideal (%)
27	139,166	136,564	+2,602	+1.91
28	131,368	136,564	-5,196	-3.80
29	136,679	136,564	+115	+0.08
30	139,399	136,564	+2,835	+2.08
31	129,622	136,564	-6,942	-5.08
32	155,619	136,564	+19,055	+13.95
33	111,915	136,564	-24,649	-18.05
34	155,435	136,564	+18,871	+13.82
35	126,686	136,564	-9,878	-7.23

19. On May 24, 2012, the Alabama Legislature passed SB25, which establishes new district lines for the State Senate.

20. On May 31, 2012, Governor Bentley signed SB25, and that bill has been enrolled as Act No. 2012-603. A copy of Act No. 2012-603 is attached to this Complaint as Exhibit 2. Notwithstanding its adoption, Act No. 2012-603 has not been enforced.

21. As with the 2001 State Senate plan, the plan established by Act No. 2012-603 has eight majority-minority districts.

22. Consistent with the portion of the Guidelines referred to in paragraph 12 above, the plan established in Act No. 2012-603 not only satisfies constitutional one-person, one-vote standards, it also has an overall population deviation of less than 2%. The demographics of the majority-minority Senate Districts in the plan established by Act No. 2012-603 are as follows:

Table S2:

Act No. 2012-603 Majority-Minority Senate District Demographics				
Senate District Number	Act 2012-603 Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 2001 District Using 2010 Census Data (%)	2001 Senate Total Black Pop. (%)	1993 Senate Total Black Pop. (%)
18	59.10	–17.64	66.865	65.89
19	65.31	–20.06	66.227	63.00
20	63.15	–21.37	65.697	64.28
23	64.84	–18.03	62.305	63.46
24	63.22	–12.98	62.409	65.36
26	75.13	–11.64	71.507	70.34
28	59.83	–3.80	56.458	61.09
33	71.64	–18.05	62.451	65.34

**CLAIM 1: DECLARATORY JUDGMENT
FOR 2012 STATE HOUSE OF REPRESENTATIVES PLAN**

23. The allegations in paragraphs 1 through 17 are incorporated herein by reference as if fully set forth.

24. The State House of Representatives plan enacted in Act No. 2012-602, when compared to the benchmark plan adopted in Act No. 2001-729, does not lead to retrogression in the position of minority voters in Alabama with respect to the effective exercise of their electoral franchise.

25. The State House of Representatives plan enacted in Act No. 2012-602 does not have the purpose and will not have the effect of denying or abridging the right of minority voters to vote.

**CLAIM TWO: DECLARATORY JUDGMENT
FOR 2012 STATE SENATE PLAN**

26. The allegations set forth in paragraphs 1 through 10 and paragraphs 18 through 22 above are hereby incorporated by reference as if fully set forth.

27. The State Senate plan adopted in Act No. 2012-603, when compared to the benchmark plan adopted in Act No. 2001-727, does not lead to retrogression in the position of minority voters in Alabama with respect to the effective exercise of their electoral franchise.

28. The State Senate plan adopted in Act No. 2012-603 does not have the purpose and will not have the effect of denying or abridging the right of minority voters to vote.

**CLAIM THREE:
ALTERNATIVE CONSTITUTIONAL CLAIM
REGARDING VRARAA**

29. The allegations in paragraphs 1 through 28 are incorporated by reference.

30. The Alabama House of Representatives redistricting plan adopted in Act No. 2012-602 does not retrogress. Indeed, that plan is “ameliorative” because it increases the number of African-American majority districts.

31. The Alabama Senate redistricting plan adopted in Act No. 2012-603 contains the same number of African-American majority districts as the 2001 plan and does not retrogress.

32. Because neither plan retrogresses, each plan would certainly have been precleared before Congress amended the Voting Rights Act in 2006.

33. In 2006, Congress did not simply extend Section 5's substantive mandate on covered jurisdictions. It significantly expanded the substantive standards to coerce covered jurisdictions to maintain and adopt race-based electoral schemes that prefer certain groups.

34. First, Congress expanded the prohibition against voting changes with the purpose or effect of "denying or abridging the right to *vote*," 42 U.S.C. § 1973c(a) (emphasis added), to also prohibit changes with the purpose or effect of "*diminishing the ability* of any citizens . . . to elect their preferred *candidates* of choice." *Id.* § 1973c(b) (emphasis added). The Justice Department and the 2006 Congress interpret Section 5 to protect only "members of a racial or language minority group." *See* 28 C.F.R. § 51.54(a); *see also* VRARAA § 2(b)(9), 120 Stat. at 578 ("racial and language minority citizens"). This 2006 VRARAA amendment thus establishes a floor for minority electoral success in Alabama and all other covered jurisdictions until 2031, without regard to whether minorities in Alabama and those other jurisdictions have an equal opportunity to elect their preferred candidates or to participate in the electoral process under the voting change, and without regard to whether there are compelling reasons supporting the voting change.

35. Second, Congress required the Attorney General to require the enhancement of minority-preferred candidates' electoral success by authorizing Section 5 objections not only to changes with a retrogressive purpose but also to those

which the Attorney General deems to have been made for “*any* discriminatory purpose.” 42 U.S.C. § 1973c(c) (emphasis added).

36. Rejection of either or both these plans, neither of which retrogresses, on grounds arising from Section 5 of the 2006 VRARAA amendments to the Voting Rights Act, including, but not limited to, the expansion of the preclearance inquiry to include “any” discriminatory purpose and the concomitant burden on the State of Alabama to disprove any and all such allegations would be an unconstitutional exercise of congressional and administrative power.

37. Rejection of either or both of these plans on grounds arising from Section 5 of the 2006 VRARAA amendments to the Voting Rights Act would unconstitutionally burden and infringe upon the State of Alabama’s sovereignty and would not be congruent with, or proportional to, any problem that Congress was trying to address in 2006.

38. To apply Section 5 of the 2006 VRARAA amendments to the Voting Rights Act to either or both of these plans would be an unconstitutional extension of the power of Congress to remedy past violations of the Fifteenth Amendment, both facially and as-applied.

**CLAIM FOUR:
ALTERNATIVE CONSTITUTIONAL CLAIM
REGARDING VRA §§ 4(b) & 5**

39. The allegations in paragraphs 1 through 28 are incorporated by reference as if fully set forth.

40. In 1965, Congress enacted a coverage formula for Section 5 that resulted in the application of the preclearance requirement to any jurisdiction which (1) used a test or device as a prerequisite for voting or registration that was identified in Section 4(a) of the Act; and (2) in which less than 50% of the persons of voting age were registered to vote on November 1, 1964 or voted in the presidential election of November 1964. Application of that formula resulted in Section 5 coverage for the State of Alabama and other jurisdictions.

41. In 1970, in the course of reauthorizing the Voting Rights Act for another 5 years, Congress extended the coverage of Section 5 to include any jurisdiction that maintained a prohibited test or device on November 1, 1968 and had voter registration or turnout rates of less than 50% in the November 1968 presidential election. The State of Alabama remained covered.

42. In 1975, Congress again reauthorized the Voting Rights Act, this time for another 7 years. Congress also permanently banned the use of any prohibited test or device on a nationwide basis. In addition, Congress extended the coverage of Section 5 to include any jurisdiction that maintained a prohibited test or device on November 1, 1972 and had voter registration on that date or turnout in the 1972 presidential election of less than 50%. The State of Alabama remained covered.

43. Even though Congress has reauthorized the Voting Rights Act twice since 1975, in 1982 and 2006, it has continued to apply the voter registration and turnout rates from 1964, 1968, and 1972 to determine the coverage of Section 5.

44. Congress has continued to use the voter registration and turnout rates from 1964, 1968, and 1972 even though it has found “that the number of African-Americans who are registered and who turn out to cast ballots has increased significantly over the last 40 years, particularly since 1982. In some circumstances, minorities register to vote and cast ballots at levels that surpass those of white voters.” H.R. Rep. 109-478, at 12 (2006).

45. Congress has continued to use the voter registration and turnout rates from 1964, 1968, and 1972 even though it found that “the disparities between African-American and white citizens who are registered to vote have narrowed considerably in six southern States covered by the temporary provisions (Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia) and in the 40 counties covered in the State of North Carolina.” *Id.*

46. Congress has continued to use the voter registration and turnout rates from 1964, 1968, and 1972 even though it found that “presently in seven of the covered states, African-Americans are registered at a rate higher than the national average,” that in two more covered states, African-American registration is “identical to the national average,” and that in “California, Georgia, Mississippi, North Carolina, and Texas, black registration and turnout in the 2004 election . . . was higher than that for whites.” S. Rep. No. 109-25, at 10–11 (2006).

47. Congress continued to use the voter registration and turnout rates from 1964, 1968, and 1972 based on its conclusion that “vestiges of discrimination in voting continue to exist as demonstrated by second generation barriers con-

structed to prevent minority voters from fully participating in the electoral process” and “[t]he continued evidence of racially polarized voting in each of the jurisdictions covered by the expiring provisions of the [VRA] demonstrates that racial and language minorities remain politically vulnerable, warranting the continued protection of the Voting Rights Act of 1965.” VRARAA § 2(b)(2)–(3), 120 Stat. at 577.

48. Congress continued to use the voter registration and turnout rates from 1964, 1968, and 1972 based on its conclusion that “[p]resent day discrimination experienced by racial and language minority voters is contained in evidence, including the objections interposed by [DOJ] in covered jurisdictions; the section 2 litigation filed to prevent dilutive techniques from adversely affecting minority voters; the enforcement actions filed to protect language minorities; and the tens of thousands of Federal observers dispatched to monitor polls in jurisdictions covered by the Voting Rights Act of 1965.” VRARAA § 2(b)(8), 120 Stat. at 578.

49. The State of Alabama is not entitled to bail out.

50. The State of Alabama supports the vigorous enforcement of the Fifteenth Amendment and the many provisions of the VRA that appropriately support its substantive command. However, it is no longer constitutionally justifiable for Congress arbitrarily to impose disfavored treatment on Alabama and the other covered jurisdictions by forcing them to justify all voting changes to federal officials in Washington, D.C., for another 25 years even though, if the coverage formula were applied using 2000, 2004, and 2008 voter registration and participation rates, Alabama would no longer be covered. Indeed, Hawaii remains a non-covered jurisdic-

tion even though applying an updated coverage formula to it would require it to comply with Section 5.

51. Congress lacked a constitutional justification for extending the duration of Section 5's coverage for another 25 years without a legislative record that showed that Alabama and the other covered jurisdictions were still engaged in the type of "unremitting and ingenious defiance of the Constitution" that justified the enactment of the Voting Rights Act in 1965. *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966).

52. The preclearance obligation of Section 5 exceeds Congress's enforcement authority under the Fourteenth and Fifteenth Amendments and, therefore, violates the Tenth Amendment and Article IV of the Constitution.

53. The formula set forth in Section 4(b) of the VRA, under which Alabama remains a covered jurisdiction subject to the preclearance obligation of Section 5, exceeds Congress's enforcement authority under the Fourteenth and Fifteenth Amendments and, therefore, violates the Tenth Amendment and Article IV of the Constitution.

54. The State of Alabama recognizes that the United States Circuit Court for the District of Columbia recently rejected a challenge to the constitutionality of Sections 4(b) and 5 of the Voting Rights Act. *Shelby County v. Holder*, 678 F. 3d 848 (D.C. Cir. 2012), *petition for cert. filed*, 81 U.S.L.W. ____ (U.S. July 20, 2012) (No. 12-96). The State of Alabama makes this claim in order to preserve it and notes

that, as indicated in the foregoing citation, on or about July 20, 2012, Shelby County filed a petition for certiorari in the United States Supreme Court.

DEMAND FOR JUDGMENT

Therefore, Plaintiff State of Alabama respectfully demands that the Court:

(a) Enter a declaratory judgment that Alabama Act Nos. 2012-602 and 2012-603 “neither ha[ve] the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2)” of the Voting Rights Act of 1965, 42 U.S.C. § 1973b(f)(2); or

(b) In the alternative, declare that the 2006 VRARAA amendments to the Voting Rights Act are unconstitutional both facially and as applied to the plans adopted in Acts Nos. 2012-602 and 2012-603 to the extent that those amendments result in the denial of preclearance, and issue a permanent injunction against Defendant Holder enjoining the enforcement of the 2006 VRARAA amendments; or

(c) In the alternative, declare that Sections 4(b) and 5 of the Voting Rights Act, 42 U.S.C. §§ 1973b(b) & 1973c, unconstitutionally exceed Congressional authority, and issue a permanent injunction against Defendant Holder enjoining the enforcement of Sections 4(b) and 5 of the Voting Rights Act, 42 U.S.C. §§ 1973b(b) & 1973c; and

(d) Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Date July --, 2012

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All Appearing pursuant to LCvR 83.2(f)