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U.S. DISTRICT COURT

Midtown Proscenium Suite 2200 ALABAMA

1170 Peachtree Street NE

Atlanta, Georgia 30309-7200

678.347.2200 tel | 678.347.2210 fax

www.sblaw.net



STRICKLAND
BROCKINGTON
LEWIS LLP

John J. Park, Jr.
(678) 347-2208
jjp@sblaw.net

September 21, 2011

VIA FEDERAL EXPRESS

Chief, Voting Section
Civil Rights Division
United States Department of Justice
Room 7254-NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

**RE: Preclearance Submission of Alabama Act No. 2011-677
(State Board of Education Redistricting)**

Dear Sir:

Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c (2006), requires that, before an Alabama statute that affects voting can be enforced, it must be precleared, and that such a statute can be precleared either judicially by the United States District Court for the District of Columbia, sitting as a three-judge court, or administratively by the Attorney General, who has delegated this review to the Voting Section in the Civil Rights Division. As you are aware, Alabama has filed an action in the United States District Court for the District of Columbia seeking judicial preclearance of Act No. 2011-677, which provides for the redistricting of Alabama's eight-member State Board of Education ("SBOE"). *Alabama v. Holder*, No. 1:11-cv-1628-TFH (D.D.C. filed Sept. 9, 2011). Alabama understands that the Department of Justice prefers the administrative process and takes the position that timely administrative preclearance moots any pending unresolved lawsuit seeking judicial preclearance of the change involved. At your request, we are furnishing all of the materials that must be included in an administrative submission to you to allow you to review them. We encourage you to undertake that review and preclear Act No. 2011-677 administratively before a response to the lawsuit is due.

Act No. 2011-677 was enacted by the Alabama Legislature in its 2011 Regular Session, which began on March 1, 2011, and ended on June 11, 2011. Act No. 2011-677 originated as House Bill 621 ("HB621"). It passed the Senate by a vote of 18-11, with six members shown as "Pass" (Irons, Keahey, Reed, Ross, Smith, and Taylor). See Exhibit A-5. The vote in the House was 76-21¹, with one African-

¹ Representative John Knight is shown as a "Yes" in the roll of the House, but the proceedings record that he intended to vote "Nay." See Exhibit A-7. Accordingly, he has been counted as a "No" here.

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American Democrat (Coleman) abstaining, and seven legislators, including two African-American Democrats (Bandy and Demetrius Newton) listed as "Pass." See Exhibit A-6.

As you are also aware, the Republican Party gained control over both houses of the Alabama Legislature in the 2010 elections. Even so, the final vote in each house on HB621 shows some deviations on both party and racial lines. In the Senate, two white Republicans from Mobile (Glover and Brooks) joined six of the seven African-American Democrats, as well as three white Democrats (Beasley, Bedford, and Fielding), in voting against the plan. Six Senate members, including Quinton Ross, an African-American member from the Montgomery area, passed either by not voting or by not being present. In the House, two African-American Democrats (Forte and Warren) voted for the plan, and one African-American Democrat (Coleman) abstained, while the remaining African-American Democrats and one white Democrat (Ford) voted against the plan.

As noted in our letter relating to the congressional plan, the Legislature's Permanent Joint Legislative Committee on Reapportionment coordinated the Legislature's preparatory work on redistricting. We incorporate the discussion pertaining to the Committee membership, the Legislative Reapportionment Office, the Guidelines, and the public hearings at this point by reference. In addition, we incorporate Exhibits F, G, H, I, J and K into this submission by reference as well. See 28 C.F.R. § 51.26(e) (2011).

In establishing the Guidelines for the current round of redistricting, the Committee made one change that affects this submission. Where the previous version of the Guidelines allowed an overall population deviation of +/- 5%, the May 2011 Guidelines provide, in part, "In order to assure compliance with the most recent case law ... and to eliminate the possibility of an invidious discriminatory effect caused by population deviations in a final legislative or State Board of Education redistricting plan ..., individual district populations should not exceed a 2% overall range of population deviation." See Exhibit G, § II(b)(2) (2011). The Committee cited the decisions in *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2001), *aff'd Cox v. Larios*, 542 U.S. 947 (2004), and *White v. Regester*, 412 U.S. 755 (1973), in support of the new standard. See Exhibit G § II (a).

In compliance with 28 C.F.R. § 51.27 (2011), we submit the following information to the Attorney General:

- (a) **New Act:** A copy of Act No. 2011-677 is attached as Exhibit A-1. A map of the SBOE redistricting plan adopted in Act No. 2011-677 is attached as Exhibit A-2. A printout of demographic data for each of the districts adopted in Act No. 2011-677, using both total population and voting age population, is attached as Exhibit A-3. A printout of compactness and contiguity scores is attached as Exhibit A-4.
- (b) **Prior Act:** The current Alabama SBOE districts were adopted as the result of the enactment of Act No. 2002-73 in the 2002 Regular Session of the Alabama Legislature. The plan adopted as the result of that enactment was administratively precleared by letter dated March 20, 2002 (Submission No. 2002-0647). The submission relating to Act No. 2002-73 included a copy of the Act, a map of the plan adopted, and the demographic data for the plan and for the previous plan with the 2000 Census data loaded into it. We hereby

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incorporate those materials by reference. *See* 28 C.F.R. § 51.26(e). Of course, if you need a copy of these materials, we will be happy to provide one.

We attach a printout of 2010 Census demographic data for the plan adopted in Alabama Act No. 2002-73 as Exhibit B.

- (c) **Statement Identifying Change:** Act No. 2002-73 amends Ala. Code § 16-3-1 (2001) to provide for redistricting of the Alabama State Board of Education ("SBOE").
- (d) **Persons making the submission:** John J. Park, Jr., Deputy Attorney General, Strickland Brockington Lewis LLP, 1170 Peachtree Street NE, Suite 2200, Atlanta, GA 30309, telephone 678-347-2208, and Winfield J. Sinclair, Assistant Attorney General, State of Alabama, Alabama State House, 501 Washington Avenue, Post Office Box 300152, Montgomery, AL 36130-0152, telephone (334) 353-9110.
- (e) **Submitting Authority & Jurisdiction Responsible for Change:** State of Alabama.
- (f) **Location of Submitting Authority:** Not applicable.
- (g) **Body Responsible for Change & Mode of Change:** Act of Alabama Legislature.
- (h) **Authority for Change:** Act No. 2011-677 was adopted pursuant to the Legislature's state constitutional authority to enact laws, Ala. Const. art. IV, and the Governor's state constitutional authority to approve laws passed by the Legislature, Ala. Const. art. V, § 125.
- (i) **Date adopted:** Act No. 2011-677 was adopted on June 15, 2011.
- (j) **Effective Date:** Act No. 2011-677 became effective upon its passage and approval by the Governor on June 15, 2011.
- (k) **Enforcement Statement:** The redistricting plan adopted in Act No. 2002-73 has not been enforced. The State of Alabama intends to use the districts established in Act No. 2011-677 for the SBOE elections in 2012.
- (l) **Statement of Scope if Less than Entire Jurisdiction:** Act No. 2002-73 affects the entire State of Alabama.
- (m) **Reason for Change:** Act No. 2011-677 was adopted because the results of the 2010 Census indicate that the SBOE districts adopted in Act No. 2002-73 are now malapportioned and can no longer be used. *See* Exhibit B.
- (n) **Anticipated Effect on Minority Groups:** A comparison of the demographic data included in Exhibit A-3 for the plan adopted in Act No. 2011-677 with the demographic data attached in Exhibit B for the plan adopted in Act No. 2002-73 will show that the

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redistricting plan adopted in Act No. 2011-677 does not have a retrogressive or discriminatory purpose or effect with respect to minority voting strength.

As with the 1996 *Sahag* plan and the plan adopted in Act No. 2002-73, the new plan has two minority-majority districts, both of which are located in the southwestern quarter of the state. The table below shows the total and voting age black population for the district under the new plan, which preserves voting strength of the African-American community:

| | 2011 Plan | | | | 2002 Plan with 2010 Census Data | | | |
|----------|-----------|--------|---------|--------|---------------------------------|--------|---------|--------|
| District | Total | % | VAP | % | Total | % | VAP | % |
| 4 | 597,468 | 54.09% | 236,278 | 51.09% | 277,715 | 54.40% | 202,420 | 51.69% |
| 5 | 596,715 | 59.25% | 255,048 | 57.08% | 292,987 | 56.89% | 212,866 | 54.70% |

- (o) **Past or Pending Litigation:** With the exception of *Alabama v. Holder*, the previously mentioned Section 5 declaratory judgment action pending in the United States District Court for the District of Columbia, the State is not aware of any pending litigation over Act No. 2011-677.

The plan adopted in Act No. 2002-73 was the subject of litigation that did not address the merits of the plan. The lawsuit, *Montiel v. Davis*, was filed as a “placeholder lawsuit” before Act No. 2002-73 was enacted. The plaintiffs then sought to amend their Complaint to challenge the new act after Act No. 2002-73 was precleared, but the United States District Court for the Southern District of Alabama dismissed the lawsuit as moot. The Eleventh Circuit affirmed the judgment of the District Court.

- (p) **Preclearance of Prior Practice:** Act 2002-73 was administratively precleared by letter dated March 20, 2002 (Submission No. 2002-0647).
- (q) **Additional Information for Redistricting:** The block assignment file for Act No. 2011-677, *see* 28 C.F.R. § 51.28(a)(5) (2011), is enclosed as Exhibit D. The block assignment file for Act No. 2002-73 is available in Submission No. 2002-0647, in Exhibit C of that submission, dated February 7, 2002. *See* 28 C.F.R. § 51.26(e).

As requested in 28 C.F.R. § 51.28(h) (2011), we identify the following minority group contacts “who can be expected to be familiar with the proposed change or who have been active in the political process.”

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(1) *Minority Senators*

Sen. Linda Coleman, 926 Chinchona Dr., Birmingham, AL 35214, 205-798-1045;
 Sen. Priscilla Dunn, 460 Carriage Hill Dr., Birmingham, AL 35022, 205-426-3795;
 Sen. Vivian Davis Figures, 104 S. Lawrence St., Mobile, AL 36602, 251-208-5480;
 Sen. Quinton Ross, 3778 Rosswood Rd., Montgomery, AL 36116, 334-280-2963;
 Sen. Hank Sanders, 1405 Jeff Davis Ave., Selma, AL 36702, 334-875-9264;
 Sen. Bobby Singleton, 11 South Union Street, Room 735, Montgomery, AL 36130, 334-242-7935; and
 Sen. Rodger Smitherman, 2029 2nd Ave. N, Birmingham, AL 35203, 205-322-0012.

(2) *Minority Representatives*

Rep. George Bandy, 1307-A Glenn Circle, Opelika, AL 36801, 334-749-0051;
 Rep. Barbara B. Boyd, 2222 McDaniel Avenue, Anniston AL 36202, 256-236-7423;
 Rep. Napoleon Bracy, Jr., 238 Montgomery Street, Prichard, AL 36610, 251-622-8118;
 Rep. James E. Buskey, 2207 Barretts Lane, Mobile, AL 36617, 251-457-7928;
 Rep. Merika Coleman, P.O. Box 288888, Birmingham, AL 35228, 205-325-5308;
 Rep. David Colston, P.O. Box 996, Hayneville, AL 36040, 334-874-2569;
 Rep. Christopher John England, P.O. Box 2089, Tuscaloosa, AL 35403-2089, 205-248-5140;
 Rep. Juandalynn Givan, 63 Greenleaf Dr., Birmingham, AL 3514, 205-798-8310;
 Rep. Dexter Grimsley, 168 Res Dr., Newville, AL 36353, 334-889-0602;
 Rep. Laura Hall, P.O. Box 3367, Huntsville, AL 35810, 256-859-2234;
 Rep. Alvin Holmes, P.O. Box 6064, Montgomery, AL 36106, 334-264-7807;
 Rep. Thomas E. Jackson, P.O. Box 656, Thomasville, AL 36784-0656, 334-246-3597;
 Rep. Yvonne Kennedy, 1205 Glennon Ave., Mobile, AL 36603, 251-438-9509;
 Rep. John F. Knight, Jr., P.O. Box 6300, Montgomery, AL 36106, 334-229-4286;
 Rep. Lawrence McAdory, 1000 Barclay Dr., Bessemer, AL 35022, 205-428-1156;
 Rep. Thad McClammy, 3035 Rosa Parks Ave., Montgomery, AL 36105, 334-264-6767;
 Rep. Darrio Melton, P.O. Box 371, Selma, AL 36702, 334-874-2569;
 Rep. Joseph C. Mitchell, 465 Dexter Avenue, Mobile, AL 36604, 251-473-5020;
 Rep. Mary Moore, 1622 36th Ave. N., Birmingham, AL 35207, 205-322-0254;
 Rep. Demetrius C. Newton, 1820 7th Ave. N., Birmingham, AL 35202, 205-252-9203;
 Rep. Oliver Robinson, 9640 Eastpoint Cir., Birmingham, AL 35217, 205-849-6765;
 Rep. John W. Rogers, Jr., 1424 18th St. SW, Birmingham, AL 35211, 205-934-0364;
 Rep. Roderick Hampton Scott, 657 Maple St., Fairfield, AL 35064, 205-781-1322; and
 Rep. Pebblin W. Warren, One Technology Court, Montgomery, AL 36130, 334-280-4469.

(3) *Other Minority Contacts*

Dr. Joe Reed, Alabama Education Association, 422 Dexter Ave., Montgomery, AL 36104, 334-834-9790;
 and
 Hon. Terry Sewell, U.S. House of Representatives, 1133 Longworth House Office Building, Washington,
 D.C. 20515.

(r) *Other Information:*

The overall population deviation is 0.27%, which comports with constitutional standards.

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All districts are contiguous. *See* Exhibit A-4.

The compactness scores for the districts established in Act No. 2011-677 are satisfactory.

While the plan splits some counties, some splitting is inevitable given the constitutional requirement of population equality. The plan splits twelve counties. The previous plan split six counties, but its overall population deviation was 9.57%. We believe that much of the increase in the number of split counties is attributable to the tightening in the allowable overall population deviation from the +/- 5% used in the 2002 plan to the +/- 1% used in the present plan.

A complete demographic picture of the State of Alabama, its counties and its cities is available at the U.S. Census Bureau website, www.census.gov.

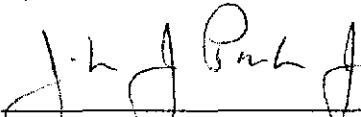
Alternative plans: A number of alternative plans were submitted in the Legislature. The block assignment files for these nine alternative plans have not been created by the Reapportionment Office and are not presently available for that reason. They can be provided on request.

A copy of this submission and the Exhibits will be available for public review in the Legislative Reapportionment Office, Room 811, 11 South Union Street, Montgomery, AL 36130, 334-242-7941.

For additional information, please contact Jack Park by telephone at 678-347-2208 or by e-mail at jjp@sblaw.net or Winfield J. Sinclair by telephone at 334-353-9110 or by e-mail at wsinclair@ago.state.al.us.

Respectfully Submitted,

LUTHER STRANGE
Attorney General of Alabama
By:


Deputy Attorney General

Enclosures

cc: Winfield J. Sinclair, Esq. (w/ enc)

EXHIBITS TO STATE BOARD OF EDUCATION SUBMISSION

- A Act No. 2011-677
 - A-1 Copy of Act No. 2011-677
 - A-2 Map of plan adopted in Act No. 2011-677
 - A-3 Demographic data for plan adopted in Act No. 2011-677 showing both total and voting age population for each district
 - A-4 Compactness and contiguity scores for plan adopted in Act No. 2011-677
 - A-5 Vote on Final Version of HB621 (Act No. 2011-677) in Alabama Senate
 - A-6 Vote on Final Version of HB621 (Act No. 2011-677) in Alabama House of Representatives
 - A-7 History for HB621
- B 2010 Census demographic data for Act No. 2002-73 districts
- C Packages for 9 alternate SBOE plans, containing map, demographic data showing both total population and voting age population, and compactness and contiguity scores
 - C-1 2010 Brewbaker BOE Plan
 - C-2 2010 McClendon BOE Plan 1
 - C-3 2010 McClendon BOE Substitute Plan
 - C-4 2010 State BOE Plan 1
 - C-5 Allen State BOE 1
 - C-6 Kennedy State BOE
 - C-7 McClammy 2010 BOE Plan
 - C-8 McClammy BOE Plan C
 - C-9 Taylor BOE Final
- D Block Assignment Files for Act No. 2011-677

- E Membership of Permanent Joint Legislative Committee on Reapportionment for 2011-2014 quadrennium (incorporated by reference)
- F State of Alabama Reapportionment Committee Guidelines for Congressional, Legislative, and State Board of Education Redistricting (incorporated by reference)
- G Minutes of Committee Meetings (incorporated by reference)
 - G-1 Minutes of Committee Meeting on March 23, 2011
 - G-2 Minutes of Committee Meeting on March 30, 2011
 - G-3 Minutes of Committee Meeting on May 3, 2011
 - G-4 Minutes of Committee Meeting on May 4, 2011
 - G-5 Minutes of Committee Meeting on May 18, 2011
 - G-6 Minutes of Committee Meeting on May 19, 2011
- H-1 Notice Package for Public Hearings (incorporated by reference)
 - H-2 Transcript of Public Hearing on May 9, 2011, in Huntsville, AL
 - H-3 Transcript of Public Hearing on May 10, 2011, in Birmingham, AL
 - H-4 Transcript of Public Hearing on May 11, 2011, in Mobile, AL
 - H-5 Transcript of Public Hearing on May 12, 2011, in Montgomery, AL
 - H-6 Transcript of Public Hearing on May 13, 2011, in Selma, AL
 - H-7 Transcript of Public Hearing on May 18, 2011, in Montgomery, AL
 - H-8 Transcript of Public Hearing on April 1, 2011, in Troy, AL
- I Press releases and news clippings (incorporated by reference)