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February 7, 2002

**VIA FEDERAL EXPRESS  
AND FACSIMILE (202) 307-3961**Chief, Voting Section  
Civil Rights Division  
Room 7254 – NWB  
Department of Justice  
1800 G Street, N.W.  
Washington, D.C. 20006**RE: Submission under Section 5 of the Voting Rights Act of 1965  
Expedited Consideration Requested**

Dear Sir:

Pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, we submit for preclearance by the Attorney General of the United States Act No. 2002-73 from the 2002 Regular Session of the Alabama Legislature. Act No. 2002-73 amends Ala. Code § 16-3-1 (2001) to provide for the redistricting of the eight elected positions on the Alabama State Board of Education ("SBOE"). The Act was passed on February 5, 2002, and signed into law by the Governor on February 7, 2002. **Because the deadline for candidates to qualify to run in the party primaries is April 5, 2002, we respectfully request expedited consideration and a response to this submission as soon as possible.**

Legislation currently pending in the Alabama State Legislature, Senate Bill 335, would move the qualifying deadline to a later date if preclearance is not obtained by March 22, 2002. That statutory change, which has not yet been enacted and would itself require preclearance, would be moot if preclearance were obtained on or before March 22, 2002.

Act No. 2002-73 was enacted by the Alabama Legislature in its 2002 Regular Session, which began on January 8, 2002. In its final Senate vote on the Conference Committee substitute for SB187, Act No. 2002-73 passed by a vote of 30 yeas to 0 nays, with 0 abstentions and 5 Senators recorded as present. The House concurred by a margin of 67 yeas to 18 nays, with 5 members abstaining and 15 members recorded as present. Among minority legislators, 7

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of 8 African-American state Senators voted for the plan, and 24 of 27 African-American House members voted for the plan. In the Senate, one minority Senator (Sen. Clay) was recorded as present. In the House, two minority Representatives (Rep. Lucius Black and Rep. Knight) were recorded as present, and one minority Representative (Rep. Mitchell) abstained. In any event, the plan received the affirmative votes of nearly all of the African-American legislators.

In compliance with 28 C.F.R. § 51.27 (2001), we submit the following information to the Attorney General:

- (a) A copy of Act No. 2002-73 is attached as Exhibit A-1. A map of the congressional redistricting plan adopted in Act No. 2002-73 is attached as Exhibit A-2. A printout of demographic data for each of the districts adopted in Act No. 2002-73, 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) The current Alabama SBOE districts were adopted by the United States District Court for the Northern District of Alabama in *Sahag v. Mitchell*, No. CV-96-AR-307-M (N.D. Ala. Nov. 27, 1996), after the prior plan, adopted by the Circuit Court of Montgomery County pursuant to a consent decree in 1993, was held unconstitutional under *Shaw v. Reno*, 509 U.S. 630 (1993), and its progeny. A copy of the November 27, 1996, Order and Memorandum Opinion of the United States District Court for the Northern District of Alabama adopting the 1996 *Sahag* court plan is attached as Exhibit B.

A copy of the text of the 1996 *Sahag* court plan is attached as Exhibit B-1. A map of the congressional redistricting plan adopted in the 1996 *Sahag* court plan is attached as Exhibit B-2. A printout of demographic data for the 1996 *Sahag* court plan, using 2000 Census data, is attached as Exhibit B-3. A printout of demographic data for the 1996 *Sahag* court plan, using 1990 Census data, is attached as Exhibit B-4. Finally, a copy of Ala. Code § 16-3-1 (2001), which was last amended in 1969, and which tied the eight SBOE districts to the then-existing eight congressional districts, is enclosed as Exhibit B-5.

- (c) Act No. 2002-73 amends Ala. Code § 16-3-1 (2001) to provide for redistricting of the Alabama State Board of Education ("SBOE"). It



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also does away with linking SBOE districts to Alabama's congressional districts. This was convenient when Alabama had eight congressmen, but has not been possible since Alabama lost one congressmen after the congressional reapportionment pursuant to the 1970 Census. This is so because the SBOE has retained its eight elected positions, while Alabama's congressional delegation has had only seven members, and thus only seven districts, since the congressional reapportionment after the 1970 Census.

- (d) Persons making the submission – John J. Park, Jr., and Charles B. Campbell, Assistant Attorney General, State of Alabama, Alabama State House, 11 South Union Street, Montgomery, AL 36130-0152, telephone (334) 242-7300.
- (e) Submitting Authority – Attorney General, State of Alabama. Jurisdiction responsible for change – State of Alabama.
- (f) Submitting authority is located in Montgomery, Alabama.
- (g) Body responsible for change – Alabama Legislature. Mode of change – legislative act.
- (h) Act No. 2002-73 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. 2002-73 was adopted on February 6, 2002.
- (j) Act No. 2002-73 became effective immediately upon its passage and approval by the Governor on February 7, 2002.
- (k) The redistricting plan adopted in Act No. 2002-73 has not been enforced.
- (l) Act No. 2002-73 affects the entire State of Alabama.
- (m) Reason for change: Act No. 2002-73 was adopted because the results of the 2000 Census indicate that the Alabama SBOE districts adopted in the 1996 *Sahag* court plan are now malapportioned. See Exhibit B-3.

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- (n) Anticipated effect on minority groups – A comparison of the demographic data attached in Exhibit A-3 regarding the plan adopted in Act No. 2002-73 with the demographic data attached in Exhibits B-3 (and Exhibit B-4) with respect to the 1996 *Sahag* court plan, will show that the redistricting plan adopted in Act No. 2002-73 does not have a retrogressive purpose or effect with respect to minority voting strength.

In this regard, the State notes that nearly all of the African-American legislators voted in favor of the plan, and none of them voted against it. African-American legislators would certainly have dissented if the plan had a retrogressive purpose or effect.

Using total population figures from the 2000 Census, there are two African-American majority districts in the 1996 *Sahag* plan (Districts 4 and 5), and two African-American majority districts in the new plan (again Districts 4 and 5). Using voting age population figures from the 2000 Census, there is one African-American majority district in the 1996 *Sahag* plan (District 5), and one African-American majority district in the new plan (again District 5). The table below shows the total black population and voting age black population for the two majority-minority districts under the new plan and the 1996 *Sahag* plan with 2000 Census data.

	Act No. 2002-73 Plan				<i>Sahag</i> Plan with 2000 Census data			
	Total	%	VAP	%	Total	%	VAP	%
District 4	271,880	51.385%	189,291	47.613%	245,972	50.210%	172,657	46.625%
District 5	297,204	55.501%	202,191	51.967%	282,908	54.940%	192,272	51.754%

These data show that the percentage of total black population in District 4 increases from 50.210% to 51.385% and that the percentage of black voting age population increases from 46.625% to 47.613% between the 1996 *Sahag* plan (using 2000 Census data) and the new plan. These data further show that the percentage of total black population in District 5 increases from 54.940% to 55.501% and that the percentage of black voting age population increases from 51.754% to 51.967% between the 1996 *Sahag* plan and the new plan. Thus, the new plan, if anything, increases black voting strength, and causes no retrogression.



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- (o) Past or pending litigation – As noted, Alabama's current SBOE redistricting plan was adopted in *Sahag v. Mitchell*, *supra*. This plan modified the plan adopted by the Circuit Court of Montgomery County, Alabama, pursuant to a consent judgment in *Hayden v. Bennett*, No. CV-93-1032 (Montgomery County, Ala. Cir. Ct. Aug. 5, 1993). There was other litigation surrounding the SBOE districts in the 1990s. See *Ex parte Collins*, 717 So. 2d 771, 772 (Ala. 1998) (granting writ of mandamus to Circuit Court of Montgomery County to vacate 1993 consent judgment in *Hayden v. Bennett* and dismiss that case in the light of the decision in *Sahag*); *Collins v. Bennett*, 684 So. 2d 681, 681–83 (Ala. 1995) (describing additional cases regarding SBOE districts).

There is presently a case pending in the United States District Court for the Southern District of Alabama regarding congressional redistricting in the light of the 2000 Census. That case is styled *Montiel v. Davis*, No. CV-01-0780-BH-S (S.D. Ala.). The case was tried on December 13, 2001, and the court published two potential court-drawn plans for comment by the parties on January 18, 2002. More information on this case will follow under separate cover.

Another case is presently pending in State court regarding SBOE redistricting as well. That case is *Fant v. State of Alabama*, No. CV-01-3344 (Montgomery County, Ala. Cir. Ct. filed Nov. 19, 2001). That case has been stayed. More information on this case will follow.

- (p) The 1996 *Sahag* court plan was not subject to preclearance. *Sahag*, mem. op. at 18 n.9, and the court's judgment was not appealed.
- (q) The block assignment files specified in 28 C.F.R. § 51.28(a)(5) are being sent to you by electronic mail and in an enclosed CD-ROM as Exhibit C. The files will include block assignment files for the plans enclosed as Exhibits A-1 and B-1. A map of each of these plans, as requested in 28 C.F.R. § 51.28(b), is enclosed as Exhibits A-2 and B-2. The demographic information referred to in 28 C.F.R. § 51.28(a)(1) is included as Exhibits A-3, B-3, and B-4.

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(s) Other information:

The State notes that the plan comports with the Reapportionment Committee *Guidelines for Legislative, State Board of Education, and Congressional Redistricting, State of Alabama* that the Permanent Legislative Committee on Reapportionment adopted on March 1, 2001. Those *Guidelines* were furnished to you as Exhibit G to the State's submission of Act No. 2001-727 (Submission Number 2001-2406), and are incorporated by reference into this submission. In regard to those *Guidelines*, the State notes:

- (1) The overall relative population deviation is 9.57%, which comports with the applicable constitutional standards for legislatively enacted plans.
- (2) All districts are contiguous. Exhibit A-4 shows that District 6 has two "holes," and Districts 4 and 8 each have one single point of contiguity. The hole/single point feature between Districts 6 and 8 is created by the county line between Marshall and Jackson counties, which the new plan uses to divide Districts 6 and 8. This feature is present in the Alabama State Senate districting plan (*see* Exhibit A-4 to Submission Number 2001-2406), as well as in any plan that uses the Marshall-Jackson county line to separate districts. The hole/single point feature between Districts 6 and 4 is created by the city limits of the City of Hoover, which the new plan uses to divide Districts 6 and 4 at some points in Jefferson County.

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- (3) The compactness scores for the districts established in Act No. 2002-73 are satisfactory. *See* Exhibit A-4.
  - (4) While the plan splits counties, some splitting is inevitable given the constitutional requirement of substantial population equality. The new plan splits six counties, three of which were split in the 1996 *Sahag* plan.
  - (5) A complete demographic picture of the State, its counties and its cities is available at the U.S. Census Bureau, U.S. Department of Commerce, *Profiles of General Demographic Characteristics 2000, 2000 Census of Population and Housing, Alabama* (May 2001), and on the internet at [http://www2.census.gov/census\\_2000/datasets/demographic\\_profile/Alabama/2kh01.pdf](http://www2.census.gov/census_2000/datasets/demographic_profile/Alabama/2kh01.pdf).
- (t) Alternative plans:

There have been numerous alternative plans submitted in both the legislature and in the *Montiel v. Davis* case mentioned above, including two court-drawn plans published by the court for comment. We will provide the block assignment files and brief demographic information for each of these plans under separate cover.

For further information, please contact Jack Park by telephone at (334) 242-7997 or electronic mail at [jpark@ago.state.al.us](mailto:jpark@ago.state.al.us) or Charles Campbell by telephone at (334) 353-3198 or by electronic mail at [ccampbell@ago.state.al.us](mailto:ccampbell@ago.state.al.us).

Sincerely,

BILL PRYOR  
Attorney General  
By:



JOHN J. PARK, JR.  
CHARLES B. CAMPBELL  
Assistant Attorneys General

BP/CBC  
Attachments



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cc: Honorable Don Siegelman (w/o encl.)  
Honorable Steve Windom (w/o encl.)  
Honorable Seth Hammett (w/o encl.)  
Honorable Jeff Enfinger (w/o encl.)  
Honorable Steve French (w/o encl.)  
Honorable Ken Guin (w/o encl.)  
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