Exhibit

Department of Justice Section 5 Objection Letters Since 2000

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U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

August 16, 2000

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Dear Mr. Head:

This refers to 42 annexations (adopted between March 19, 1992, and March 16, 2000) and their designation to council wards of the City of Alabaster in Shelby County, Alabama, submitted pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your partial responses to our July 10, 2000, request for additional information on numerous dates between July 13 and August 16, 2000.

We have considered carefully the information you have provided, as well as Census data, and comments and information from other interested parties. As discussed later in this letter, the City of Alabaster has not yet provided a complete response to our request for additional information, and has provided information which the city subsequently has acknowledged to be inaccurate. Under these circumstances, the Attorney General would normally postpone a decision on the merits of your submission until the city has responded fully and accurately to our July 10, 2000, letter. However, the city has asked us to issue a substantive Section 5 determination regarding the submitted changes based on the current incomplete record because of the city's fast approaching August 22, 2000, election.

The Attorney General does not interpose any objection to 40 annexations designated to majority white wards adopted between March 1992 and March 2000, nor to annexation Ordinances 94-338 and 96-410. Additionally, the Attorney General does not object to the designation of 40 annexations to Council Wards 5, 6,

and 7. 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.

However, we cannot reach the same conclusion with respect to the designation of the annexations in Ordinance Nos. 94-338 and 96-410 (hereafter referred to as the "Ward 1 annexations"). According to the 1990 Census and figures provided by the city at the time of its 1991 redistricting submission, minority residents constitute 11.0 percent of the city's population and 68.2 percent of Ward 1.

It is difficult to assess with precision the current population of the city within the existing wards. The city has provided incomplete and inconsistent data and inaccurate maps in response to our July 10, 2000, request for additional information. Each map provided by the city has subsequently been represented to contain several mistakes. Moreover, the demographic statistics provided are out of date given the city's growth in the decade and it is unclear to which precise boundaries the statistics relate. While the 2000 Census data will provide a clearer picture of the current demographics in the city, we are only able to utilize the data provided to make population estimates. The city has acknowledged that it has had exponential growth, yet has provided no response to our request for information to quantify or assess this growth.

You provided an estimate that there are 155 housing units in the proposed Ward 1 annexations. The city secretary has provided data showing that the Ward 1 annexations would add 179 white registered voters and two black registered voters, thereby decreasing the minority percentage of registered voters in this ward from 51.2 to 45.7 percent. This significant decrease in the minority voter percentage in Ward 1 appears retrogressive.

In 1975, the Attorney General found "a pattern of racial bloc voting [to be present] in city elections" in Alabaster when he objected to annexations which diluted minority voting strength under the city's then at-large election system. In our July 10, 2000, letter, we asked the city to provide state, county, school district, and municipal election returns, and related voter registration information in order to assess whether elections in Alabaster continue to be characterized by racially polarized voting. As of this time, we have not received

all of the requested election returns or complete voter registration data, although you informed us on August 15, 2000, that we would be receiving them shortly. As a result, a current racial bloc voting analysis could not be completed at this time as we have not had the opportunity to review and analyze the documents. Based on our review of the records submitted, we have no basis to believe that racial bloc voting does not continue to exist in the city. Therefore, it appears that the retrogression caused by the proposed Ward 1 annexations would seriously threaten, if not eliminate, the only opportunity minority voters currently have to elect candidates of their choice to city office.

Where an annexation significantly decreases minority voting strength, the reasons for the annexations must be objectively verifiable, and legitimate, and the post-annexation election system must fairly reflect the post-annexation voting strength of the minority community. City of Richmond v. United States, 422 U.S. 358 at 371-373 (1975). Here, the designation of these annexations to Ward 1 is likely to result in the elimination of representation for a minority community which the submitted data suggest comprises 9 to 10 percent of the expanded city. 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.

Our analysis indicates that there were options available to and considered by the city which would have avoided the retrogressive effects of the proposed Ward 1 annexations, such as a limited redistricting that would make the annexations contiguous to and a part of Wards 2 or 6. We understand that these options had been under discussion among city council members since at least June 2000, and that concerns about the potential retrogressive impact of the proposed Ward 1 annexations had been discussed in the city council as early as 1996.

The city has proffered few reasons for its refusal to ameliorate the retrogressive impact of the proposed Ward 1 annexations, asserting that Ward 1 has a lower population than other wards and that the annexations therefore should be designated to that ward. Yet we understand that the city had recently considered a limited redistricting, which would link these annexations to Ward 6, a ward with fewer registered voters than Ward 1. The city also asserts that these annexations were designated to Ward 1 because they were not directly contiguous to any other wards. However, the city's consideration and rejection of alternatives to this designation in order to cure this retrogression demonstrates that the city did not consider its options limited by the location of the annexations.

The city asserts that this land was vacant when annexed and therefore could not have had any negative impact on minority voting strength and is therefore unobjectionable. The law is

clear, however, that the effect of an annexation is to be determined by the most currently available population data when an annexation is submitted for preclearance. City of Rome v. United States, 446 U.S. 156, 186 (1979); 28 C.F.R. 51.54(b)(2). Here, the city waited several years before it sought preclearance of the Ward 1 annexations. Additionally, it was clear that the city was aware at the time of the annexations that they were slated for significant residential development in the near future with homes that were beyond the financial means of minorities in the area.

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 am unable at this time to conclude that the City of Alabaster has carried its burden of showing that the designation of Ward 1 annexations has neither a discriminatory purpose nor a discriminatory effect. Therefore, on behalf of the Attorney General, I must object to the designation of the annexations (Ordinance Nos. 94-338 and 96-410) to Ward 1. We will continue our review of the information most recently submitted to assess whether this information would affect our determination and we will notify you of the results of this review as soon as possible.

We note 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 has 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. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objection by the Attorney General remains in effect and the designation of Ordinance Nos. 94-338 and 96-410 to Council Ward 1 continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10, 51.11, 51.45, and 51.48(c) and (d). Therefore, residents of the areas annexed by Ordinance Nos. 94-338 and 96-410 may vote for the mayoral position in the upcoming election but may not vote in the Ward 1 city council race.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Alabaster plans to take concerning this matter. If you have any

questions, you should call Judybeth Greene (202-616-2350), an attorney in the Voting Section. Please refer to File No. 2000-2230 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Bill Lann Lee SDJ

Bill Lann Lee
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

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

JAN - 8 2007

Mr. Troy King
Attorney General

Mr. John J. Park, Jr.
Assistant Attorney General
State of Alabama
Alabama State House
11 South Union Street
Montgomery, Alabama 36130

Dear Messrs. King and Park:

This letter refers to the change in method of selection for filling vacancies on the Mobile County Commission from special election to gubernatorial appointment in Mobile County, Alabama, pursuant to decisions of the Alabama Supreme Court in *Stokes v. Noonan*, 534 So. 2d 237 (Ala. 1988), and *Riley v. Kennedy*, 928 So. 2d 1013 (Ala. 2005), submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, as amended. This matter arises from an order entered on August 18, 2006, by a three-judge panel in *Kennedy v. Riley*, 445 F. Supp. 2d 1333 (M.D. Ala. 2006), ruling that the State of Alabama submit the two decisions for preclearance under Section 5. We received your submission on November 9, 2006.

We have carefully considered the information you have provided, as well as census data, comments, and 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. *Georgia v. United States*, 411 U.S. 526 (1973). *See also* 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)).

Pursuant to Act No. 85-237, a vacancy on the Mobile County Commission is to be filled through popular election by the voters within the relevant single-member district. That statute was precleared by the Attorney General under Section 5 on June 17, 1985 (File No. 1985-1645),

and was first implemented in a 1987 District 1 special election. Pursuant to decision of the Alabama Supreme Court in *Stokes v. Noonan*, that method of filling vacancies was changed from election by the voters of the district to appointment by the Governor of Alabama in 1988, and reaffirmed by *Riley v. Kennedy* in 2005.

Pursuant to the decision of the three-judge federal panel in *Kennedy v. Riley*, the State has submitted the changes effected by *Stokes v. Noonan* and *Riley v. Kennedy* for review under Section 5 of the Voting Rights Act. Additionally, we understand that Alabama law has changed, legislatively reversing the decision in these cases and restoring the authority to fill vacancies to the voters themselves for future elections. This is the effect of Act No. 2006-342, which was signed by the Governor on April 12, 2006, and which would govern all future vacancies. The question before us, therefore, is limited to whether the change effected by *Stokes v. Noonan* and *Riley v. Kennedy* will lead to impermissible retrogression, caused by the appointment, rather than election, of an individual to fill a vacancy on the Mobile County Commission for a term expiring in 2008.

In evaluating whether a change affecting voting will lead to impermissible retrogression, the Attorney General compares the submitted change to the practice or procedure in effect at the time of the submission. 28 C.F.R. § 51.54(a). In light of your submission, we note that a change brought about by a state court decision is subject to Section 5. *Branch v. Smith*, 538 U.S. 254, 262 (2003). A practice or procedure that is not legally enforceable under Section 5 cannot serve as a benchmark; the comparison is with the last legally enforceable practice or procedure used by the jurisdiction. *Id.* Changes that are not precleared are not enforceable. 42 U.S.C. § 1973c; *Hathorn v. Lovorn*, 457 U.S. 255, 269 (1982); *Clark v. Roemer*, 500 U.S. 646, 652 (1991). Because the changes pursuant to *Stokes* and *Riley* were never precleared, they cannot serve as the benchmark. *See Kennedy*, 445 F. Supp. 2d at 1336, (citing *Abrams v. Johnson*, 521 U.S. 74, 96-97 (1997)); *Gresham v. Harris,* 695 F.Supp. 1179, 1183 (N.D. Ga. 1988) (three-judge court), *aff'd sub nom. Poole v. Gresham*, 495 U.S. 954 (1990). The benchmark is determined without regard to its legality under state law. *Kennedy,* 445 F. Supp. 2d at 1336 (citing *City of Lockhart v. United States*, 460 U.S. 125, 132-133 (1983)); *Perkins v. Matthews*, 400 U.S. 379, 394-95 (1971).

Thus, the last precleared procedure for filling vacancies in the Mobile County Commission that was in force or effect was the special election method set forth in Act No. 85-237. *Kennedy*, 445 F. Supp. 2d at 1336. This Act remains in full force and effect, as it affects voting, was precleared, and was implemented in the 1987 special election cycle. *See Young v. Fordice*, 520 U.S. 273, 282-83 (1997); *Lockhart*, 460 U.S. at 132-33. It is therefore the benchmark against which we measure the proposed change to fill vacancies by appointment of the Governor of Alabama.

The measurement is straightforward. As a result of litigation under the Voting Rights Act, Mobile County is governed by the three-member Mobile County Commission, the members of which are elected from single-member districts. *Brown v. Moore*, Civ. Act. No. 75-298-P

(S.D. Ala. 1976) (unpublished opinion). One of the single-member districts, District 1, is over sixty-three percent African-American in population and registered voters. The African-American voters of District 1 enjoy the opportunity to elect minority candidates of their choice to the County Commission; indeed, they enjoyed it in the 1987 special election in which Act 85-237 was first implemented. There is no dispute that the change would transfer this electoral power to a state official elected by a statewide constituency whose racial make-up and electoral choices regularly differ from those of the voters of District 1. Attorneys General have on at least ten occasions previously interposed objections to changes in method of selection from election to appointment in Alabama and elsewhere. For instance, in 1971, the Attorney General objected to Act No. 2445 of the Alabama Legislature, which changed the method of selection of judges of Justice of the Peace Courts in Alabama from election to appointment. Letter of David L. Norman, Assistant Attorney General, Civil Rights Division, to Hon. William J. Baxley, Attorney General, State of Alabama, Dec. 26, 1973.

The transfer of electoral power effected by *Stokes v. Noonan* and *Riley v. Kennedy* appears to diminish the opportunity of minority voters to elect a representative of their choice to the Mobile County Commission. We have received no indication that the voters of District 1 would have selected the particular individual selected by the Governor. Under these circumstances, the State has failed to carry its burden of proof that the change is not retrogressive. On behalf of the Attorney General, therefore, I must interpose an objection to the change in method of selection for vacancies occurring on the Mobile County Commission from special election to gubernatorial appointment.

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 United States District Court for the District of Columbia is obtained, the method of selection for vacancies on the Mobile County Commission by gubernatorial appointment will continue to be legally unenforceable as a matter of federal law. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. § 51.10.

We also have been advised, as suggested above, that the State has, in essence, re-enacted the provisions of Act No. 85-237 in Act No. 2006-342, which similarly provides that future vacancies on the Mobile County Commission will be filled by special election. To the extent that Act No. 2006-342 does not change the voting practices and procedures set forth in Act No. 85-237, it need not be submitted for Section 5 review. We respectfully request your advice as to whether changes covered by Section 5 are contained in the 2006 law. In the meantime, special elections may be held pursuant to Act No. 85-237.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Alabama plans to take concerning this matter. If you have any

questions, please call Robert Lowell (202-514-3539), an attorney in the Voting Section. Because this matter has been the subject of pending litigation in *Kennedy v. Riley*, we are serving copies of this letter by facsimile transmission to the Court and counsel of record.

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*

August 25, 2008

Dan Head, Esq.
Wallace, Ellis, Fowler & Head
P.O. Box 587
Columbiana, Alabama 35051

Dear Mr. Head:

This refers to 177 annexations, their designations to districts, and the 2008 redistricting plan for the City of Calera in Shelby County, Alabama, 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 May 7, 2008, request for additional information on June 24, 2008; additional information was received through August 18, 2008.

According to the 2000 Census, the City of Calera has a total population of 3,158 persons, of whom 628 (19.9%) were identified as African American. We understand that the city has experienced sizeable growth since that time, due primarily to residential development on the 177 annexations now under review. The city has provided estimates that its population is at 10,806 persons as of December 2006, of whom 20 percent are identified as African American.

The submitted annexations and redistricting plan would eliminate the city's sole majority African-American district. This district and the single-member district method of election were adopted pursuant to a consent decree approved 18 years ago by the court in Dillard v. City of Calera, Civil Action No. 2:87cv1167-MHT. Under this arrangement, the district has elected an African-American candidate for the last 20 years.

We have carefully considered the information you have provided, as well as information and materials from other interested parties. Under Section 5 of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Public Law 109-246, 120 Stat. 577 (2006) ("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 also Georgia v. Ashcroft, 123 U.S. 2498 (2003); Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52 (c). As discussed further below, I cannot conclude that the city has sustained its burden of showing that the proposed change does not have a discriminatory purpose or effect. Therefore, based on the information available to us, I object to the voting changes on behalf of the Attorney General.

The United States Supreme Court has held that where annexations 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 post-annexation voting strength of the minority community in the expanded city. City of Richmond v. United States, 422 U.S. 358, 370-3 (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); City of Rome v. United States, 446 U.S. 156 (1980).

For 13 years, the city has failed to submit their adopted annexations for Section 5 review. Our Department has not received an annexation submission from the city since 1993, and the city admits that it is at fault for not submitting the 177 annexations. The only submission in the last 13 years was a proposed redistricting plan based on the 2000 Census which included no mention of the missing annexations.

In a similar situation, the United States Supreme Court in City of Rome v. United States, 446 U.S. at 186, made it clear that the current population of the annexations needs to be included for Section 5 review:

> Because Rome's failure to preclear any of these annexations caused a delay in federal review and placed the annexations before the District Court as a group, the court was correct in concluding that the cumulative effect of the 13 annexations must be examined from the perspective of the most current available population data.

The Supreme Court found that the City of Rome failed to provide the necessary information about total population, voting age population, and a racial composition for each. *Id.* Likewise, the City of Calera also has failed to provide any reliable current population information about the 177 annexations here.

The demographic data provided by the city regarding total population and voting age population in the city as a whole is also unreliable. Beginning with total population, the city used certificate of occupancy data to estimate total population in December 2006 of 10,806. The city arrived at this number by decreasing the persons per household multiplier of 2.3 significantly from the 2000 Census without explanation. Had the city used the 2000 Census number, the population estimate would have been approximately 12,000 persons. The United States Census Bureau estimated the population in July 2006 at 8,329 and in July 2007 at 9,398. The city has not explained why its population estimate is substantially higher than the Census estimate. Likewise, the city fails to provide reliable voting age population.

The estimate of racial composition in the city has no basis. The city has claimed that the population is 20 percent black throughout the newly annexed areas, but no attempt has been made to determine their composition. Simply because black population in the city was 20 percent of the population in 2000, does not mean that would be the percentage of black population in the newly annexed areas. In fact, both city-wide voter registration and school data in recent years appear to show growth in the black population. In failing to provide adequate numbers to evaluate the annexations and concomitant redistricting plan, the city fails to meet its burden of proof.

The City of Calera also appears to have failed to consider how the African-American population would be fairly reflected in the post-annexation election system moving forward. In March 2007, three months prior to the adoption of the proposed redistricting plan, the State of Alabama and plaintiffs filed a Joint Motion to Show Cause asking why the case should not be dismissed. In that order to show cause, they stated that the Alabama legislature in Act No. 2006-252 provide that the Calera City Council can increase the size of the city council under the single-member district method of election by general or local law in the future. The court dissolved the consent decree on May 9, 2007. According to the geographer hired by the city, he was willing to provide information for the city to consider alternative methods of election that would have provided black voters a better opportunity to elect a candidate of choice, but the city council expressed no interest in these alternatives.

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 Court for the District of Columbia is obtained, the annexations and concomitant redistricting plan will 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 Calera plans to take concerning this matter. If you have any questions, you should call Eric Rich (202-305-0107), an attorney in the Voting Section.

Sincerely,

Grace Chung Becker

Grace Chung Becker
Acting Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

MAY 20 2002

Lisa T. Hauser, Esq.
Gammage & Burnham
Two Central Avenue, 18th Floor
Phoenix, Arizona 85001-4402

José de Jesús Rivera, Esq.
Haralson, Miller, Pitt & McAnally
3003 North Central, Suite 14000
Phoenix, Arizona 850012-2151

Dear Ms. Hauser and Mr. Rivera:

This refers to the 2001 legislative redistricting plan for the State of Arizona, submitted by the Arizona Independent Redistricting Commission [AIRC] 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 26, 2002, request for additional information through May 16, 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. As discussed further below, I cannot conclude that the Arizona Independent Redistricting Commission has sustained its burden under Section 5 in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 legislative redistricting plan for the State of Arizona.

The 2000 Census indicates that the state has a total population of 5,130,632, of whom 25.3 percent are Hispanic, 4.9 percent are Native American, and 3.2 percent are African American. The state's voting age population [VAP] is 3,763,685, of whom 21.3 percent are Hispanic, 4.1 percent are Native American, and 2.8 percent African American. One of the most significant changes to the state's demography has been the increase in the Hispanic population. Between 1990 and 2000, the

Hispanic share of the population increased from 18.8 percent to 25.3 percent.

Under the Voting Rights Act, a jurisdiction seeking to implement a proposed change affecting voting, such as a redistricting plan, must establish that, in comparison with the benchmark standard, practice, or procedure, the proposed change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." See Beer v. United States, 425 U.S. 130, 141 (1976). 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). Finally, the submitting authority has the burden on demonstrating that the proposed change has neither the prohibited purpose nor effect. Id. at 328; see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

The constitutional requirement of one-person, one-vote mandated that the state reapportion the legislative districts in light of the population growth since the last decennial census. We note that the state's redistricting plan was devised by the Arizona Independent Redistricting Commission [AIRC], which had assumed reapportionment responsibilities under Proposition 106 of the Arizona Constitution.

The Arizona Legislature consists of a House of Representatives and Senate. There are sixty representatives, two from each of the state's thirty legislative districts. There are thirty senators, one from each legislative district. Senators and representatives serve two-year terms. Under the benchmark plan, there is one district (District 3) in which American Indians are a majority of the population and seven districts (Districts 5, 7, 8, 10, 11, 22, and 23) in which Hispanic persons are a such majority; in five of these districts (3, 10, 11, 22, and 23), a majority of the voting age population are minority individuals. In these eight district our analysis indicates the minority voters within the district have the ability to elect their candidate of choice. This is the benchmark plan for our analysis. Because retrogression is assessed on a state-wide basis, the State may remedy this impermissible retrogression either by restoring three districts from among these problem areas, by creating three viable new majority minority districts elsewhere in the State, or by some combination of these methods.

According to your submission, the AIRC claims the proposed plan contains ten districts (Districts 2, 13-16, 23-25, 27, and 29) in which minority voters will be able to elect candidates of their choice. However, based on the information provided, we have determined that the AIRC has not met its burden of establishing that minority voters will continue to be able to elect candidates of their choice in five districts (Districts 13, 14, 15, 23, and 29). As a result, the proposed plan, which results in a net loss of three districts from the benchmark plan in which minority voters can effectively exercise their electoral franchise, is retrogressive. We detail those five instances below. Because retrogression is assessed on a state-wide basis, the State may remedy this impermissible retrogression either by restoring three districts from among these problem areas, by creating three viable new majority minority districts elsewhere in the State, or by some combination of these methods.

Proposed Districts 13 and 14

In southwest Phoenix, Hispanic voters from benchmark District 22 will lose their present ability to elect their candidate of choice. Under the proposed plan, the majority of the benchmark district is split between proposed districts 13 and 14. The Hispanic voting age population in the benchmark district (65.0%) decreases to 51.2 and 50.6 percent in proposed Districts 13 and 14, respectively. Historically, a district with an Hispanic voting age population percentage of that level, which is virtually identical to benchmark District 20, has not been one in which Hispanic voters have been able to elect a candidate of their choice.

The AIRC has not shown that a level of Hispanic voting age population, which has been inadequate to afford Hispanic voters with the ability to elect their candidate of choice in benchmark District 20, is sufficient to afford that opportunity in either proposed District 13 or 14. Thus, the fragmentation of benchmark District 22 into two districts eliminates one district where Hispanic voters had consistently elected their candidates of choice. Further, the AIRC also has failed to show that the proposed plan creates another district, either in the southwest Phoenix area or elsewhere in the state, to compensate for the loss of Hispanic electoral opportunity in the benchmark district.

Proposed District 15

The AIRC has designated proposed District 15 in central Phoenix with a 43.6 percent Hispanic voting age population, as a district in which Hispanics could elect a candidate of their choice. However, our analysis is unable to confirm that this is case. The proposed district was created from benchmark Districts 18, 20, 23, 25, and 26.

Proposed District 15 contains 31,729 people from benchmark District 23, of whom 72.2 percent are Hispanic. Since at least 1996, minorities in benchmark District 23 were consistently able to elect their candidates of choice. After the 2000 general election, this district's three legislative representatives were all candidates of choice of benchmark District 23 minority voters. However, the majority of proposed District 15 comes from benchmark District 25, which contained a Hispanic voting age population of 33.7 percent. We have not been able to conclude, based on the information provided by the AIRC concerning the electoral behavior of the Hispanic voters from benchmark District 25, that the addition of these voters to those from benchmark district 23 will not result in the elimination of the electoral ability currently enjoyed by minority voters in benchmark District 23.

District 23

Proposed District 23 was created out of parts of six benchmark legislative districts in the greater Phoenix area, encompassing parts of Maricopa and Pinal Counties. More than 74 percent of the proposed district comes from benchmark District 7. Hispanics are the largest minority group in both the benchmark and the proposed districts. They constitute 34.2 percent of the population in the benchmark District 7 and 29.5 percent in proposed district 23. Our information is that Hispanics voters were able to elect candidates of their choice in benchmark District 7. In benchmark District 7, 30.2 percent of the voting age population was Hispanic. As proposed, the Hispanic voting age population in District 23 is 25.7 percent. Over the past decade, this district's Hispanic community elected their candidates of choice for state senator and state representative.

In creating the proposed district, the AIRC made several adjustments. For example, the towns of San Manuel (46.2% Hispanic) and Oracle (38.3% Hispanic), both of which had been in

existing District 7 were removed while the entire city of Casa Grande (39.1% Anglo) and virtually all of Apache Junction (87.9% Anglo) were placed into proposed District 23.

We have attempted to analyze the electoral behavior in both the benchmark and proposed districts but have been unable to determine whether the Hispanic voters will continue to exercise their electoral franchise effectively in the proposed district. In addition, the circumstances surrounding the removal of these two towns and the resulting drop in the Hispanic voting age population percentage, has raised concerns regarding the ability of the AIRC to establish that this action, which had a retrogressive effect, may also have been taken, at least in part, with a retrogressive intent.

District 29

We also have not been able to conclude that proposed District 29, located in central and south Tucson, provides Hispanic voters with the ability to elect a candidate of their choice. The proposed district combines benchmark Districts 9, 10, 11, and 14 with a Hispanic voting age population of 45.1 percent. A majority of proposed District 29's population is from benchmark District 10, which had a Hispanic voting age population of 55.3 percent. The AIRC has presented no credible evidence by which we could conclude that this drop of eight percentage points in the Hispanic voting age population percentage will result in the continued ability of voters in proposed District 29 to elect candidates of their 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 Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Because the AIRC has failed to demonstrate the proposed plan is not retrogressive, either in purpose or effect, it is necessary to interpose an objection. However, some of the concerns identified result from our inability to reach the conclusion that it met the requisite Section 5 burden. Thus, if the AIRC can present evidence that satisfactorily establishes the absence of both the prohibited purpose or effect, we would be willing to reconsider this objection pursuant to the applicable provisions of Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c 28 C.F.R. 51.45.

We note that under Section 5 you have a right to seek a declaratory judgement 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 minority language group. See 28 C.F.R. 51.44. However, until the objection in withdrawn, or a judgement from the District of Columbia Court is obtained, the 2001 legislative redistricting plan for the State of Arizona 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 State of Arizona plans to take concerning this matter. If you have any questions, you should call Mr. Robert Berman (202/514-8690), Deputy Chief of the Voting Section.

We are aware the issue of the AIRC's compliance with Section 5 regarding implementation of the state's legislative redistricting plan is pending before a three judge court in Navajo Nation v. Arizona Independent Redistricting Commission, (D. Ariz). Accordingly, we are providing the Court as well as counsel of record in that case with a copy of this letter.

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

FEB 4 2003

Jean E. Wilcox, Esq.
Deputy County Attorney
110 East Cherry Avenue
Flagstaff, Arizona 86001-4627

Dear Ms. Wilcox:

This refers to the adoption of an alternative election system for board members of the Coconino Association for Vocations, Industry, and Technology, and the use of the Page, Fredonia-Moccasin, Grand Canyon, and Williams Unified School Districts' voting precincts and polling places by the district in Coconino County, Arizona, 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 September 9, 2002, request for additional information through January 23, 2003.

With regard to the change to the alternative method of election, we have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information. Based on our analysis of this information, on behalf of the Attorney General, I am compelled to object to the submitted change in the method of election.

According to the demographic data you provided, the Coconino Association for Vocations, Industry, and Technology [CAVIAT] has a total population of 21,693, of whom 8,748 (40.3%) are American Indian. There are four constituent school districts: Page Unified School District, which has a total population of 13,096 persons, of whom 60.9 percent are American Indian; Williams Unified School District, which has a total population of 4,542 persons, of whom 3.2 percent are American Indian; Grand Canyon Unified School District, which has a total population of 2,185 persons, of whom 18.9 percent are American Indian; and Fredonia-Moccasin Unified School District, which has a total population of 1870 persons, of whom 11.1 percent are American Indian.

Arizona Revised Statutes §15-393 provides the participating districts in joint technological education districts, such as CAVIAT, with the discretion to choose a method of election system other than the single-member district system identified in the statute. However, when such a choice is not made at the time of the district's creation, members of the joint board are required to be elected from five equally populated, single-member districts.

As you note in your submission, the state board of education approved a plan for CAVIAT that did not identify an alternative method of election. Accordingly, at the time of its creation in 2000, the method of election for members of the CAVIAT board became the statutorily-mandated single-member district system as outlined in §15-393A which, in part, states:

> Unless the governing boards of the school districts participating in the formation of the joint district vote to implement an alternative election system as provided in subsection B of this section, the joint board shall consist of five members elected from five single member districts formed within the joint district.

Between May 7 and May 14, 2002, the interim CAVIAT board and the participating districts in the CAVIAT joint district adopted an alternative method of election in which the voters in each of the constituent districts would elect one member of the joint board and one member would be elected from CAVIAT at large. But because the school boards participating in the CAVIAT district did not choose an alternative election system at the time the original plan was submitted to the state board of education, as required by §15-393B, under Arizona law the single-member district system came into force by default under §15-393A. It thus existed at the time the CAVIAT board and the participating school boards adopted the alternative method of election, and therefore is the benchmark against which we must measure the alternative method to determine whether it has a retrogressive purpose and or retrogressive effect. Mississippi v. United States, 490 F. Supp. 569 (D.D.C. 1979), aff'd. 444 U.S. 1050 (1980). See also, the Procedures for the Administration of Section 5, 28 C.F.R. 51.54.

Note that if the school boards participating in the CAVIAT district had instead chosen an alternative election method at the time the original plan was submitted to the state board of education, then that alternative method would have been the election system in place upon creation of the district by referendum in 2000, and the benchmark would have been the nonexistence of any prior voting mechanism.

Based upon information presented to the joint board by its staff and consultants, it appears that virtually any fairly-drawn, single-member district plan would result in voters in the Page district, the only one of the constituent school districts in which American Indians are a majority of the population, comprising a significant portion of the electorate for three of the positions, with two of these being majority American Indian. In fact, the board reviewed just such a plan and included it in its submission to the Attorney General. In addition, our independent review of the demographics confirms that it would be all but impossible to draw a constitutionally valid plan that did not contain two single-member districts with American Indian population majorities. Thus, within the context of the racially polarized voting that appears to occur in Coconino County elections, Native Americans could elect a candidate of choice to two positions under a single-member district system.

In contrast, our analysis establishes that the alternative method of election before us will afford Native American voters the ability to elect only one candidate of choice and that is in the Page district. This reduction in the number of board members that Native American voters have the ability to elect was not necessary to comply with any statutory or constitutional requirements. As such, the change is retrogressive within the meaning of Section 5.

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 opportunity to exercise the electoral franchise effectively. 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. 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 change in the method of election.

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.

Because the voting precinct and polling place changes are directly related to the alternative election system, to which we are objecting, it is not necessary or appropriate for the Attorney General to make any determination on these related changes.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Coconino Association for Vocations, Industry, and Technology 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.

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

MAR 29 2002

William D. Barr, Ed.D.
Superintendent of Schools
Monterey County Office of Education
P.O. Box 80851
Salinas, California 93912-0851

Dear Dr. Barr:

This refers to the change in the method of electing school trustees from districts to at large for the Chualar Union Elementary School District in Monterey County, California, 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 September 19, 2000, request for additional information on April 20, 2001, and January 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 district's previous submission, which instituted the districting system for the election of trustees. Based on our analysis of the information you have provided, on behalf of the Attorney General, I am compelled to object to the submitted change in the method of election.

According to the 2000 Census, the school district has a total population of 2,365, of whom 1,846 (78.1%) are Hispanic. Hispanic residents comprise 74.4 percent of the voting age population. Approximately 55 percent of the registered voters in the district are Spanish-surnamed individuals.

Prior to 1995, the school district elected its five-member board of trustees on an at-large basis. At that time, the majority-Hispanic board, enacted the method of election currently in effect. Hispanic voters under this system have the opportunity to elect candidates of choice in a three-person, multi-member election district, Trustee Area 3, which has a Hispanic population percentage of over 90 percent. The school district now proposes to reinstitute the at-large method of election. Our analysis persuades us that the school district has not established, as it must, that this change in the method of election is not being implemented for the purpose of effectuating a retrogression in minority voters' effective exercise of the electoral franchise and that it will not have such a proscribed effect.

We have examined the circumstances surrounding the initiation of the petition drive, which led to the referendum on the proposed change. The starting point of our analysis concerning whether the petition was motivated by an intent to retrogress is Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977). There, the Supreme Court identified the analytical structure for determining whether racially discriminatory intent exists. This approach requires an inquiry into: 1) the impact of the decision; 2) the historical background of the decision, particularly if it reveals a series of decisions undertaken with discriminatory intent; 3) the sequence of events leading up to the decision; and 4) whether the challenged decision departs, either procedurally or substantively, from the normal practice, and contemporaneous statements and viewpoints held by the decision-makers. Id. at 266-268.

As we understand it, the actions of the trustees elected from Area 3, a majority-Hispanic district, regarding the tenure of the district's superintendent of schools provided the impetus for the petition drive. The cover letter, which accompanied the petition, made note of this activity and then attacked the credibility of the trustees from that district, citing the language skills of one trustee and making unfavorable references to the language preferences of another. The language and tone of the letter raises the implication that the petition drive and resulting change was motivated, at least in part, by a discriminatory animus. This conclusion is further supported by statements made by proponents of the petition during our investigation.

Moreover, the petition focused on the actions of the persons elected by the Hispanic community in Area 3. However, over 90 percent of the persons signing the petition did not reside in that district. Rather, they were residents of Area 1, virtually all of whom were not Spanish-surnamed persons.

There is also evidence that the change will, in fact, have a retrogressive effect. Under the at-large system in the past, Hispanic voters have had only mixed success, and have faced consistent efforts - sometimes successful - to recall the candidates they have elected. Since the implementation of district elections, Hispanic voters have been able to elect candidates of choice, who have not been subject to recall by non-Hispanic voters. It is also apparent that even though voter registration is majority Spanish surnamed, this majority is not large and other voters often have been able to defeat Hispanic candidates of choice in district-wide elections. Indeed, during the referendum election which took place under highly charged, racially polarized circumstances, the non-Hispanic proponents easily defeated the Hispanic opposition.

The school district has failed to establish that the reversion to an at-large method of election will offer the same ability to Hispanic voters to exercise the electoral franchise that they enjoy currently. 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 opportunity to exercise the electoral franchise effectively. 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. 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 change in the method of election.

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 Chualar Union Elementary School District 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.

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

July 1, 2002

Honorable John M. McKay
President of the Florida Senate
Honorable Tom Feeney
Speaker of the Florida House of Representatives
404 Monroe Street
Tallahassee, Florida 32399-1100

Dear President McKay and Speaker Feeney:

This refers to House Joint Resolution 1987 (2002), which provides for the redistricting plan for the House of Representatives of the State of Florida, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on May 1, 2002; supplemental information was received through June 13, 2002.

We have considered carefully the information you have provided, as well as census data, comments, and information from other interested parties. As discussed further 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 2002 redistricting plan for the Florida House of Representatives.

The 2000 Census indicates that the state has a total population of 15,982,378, of whom 2,294,672 (14.4%) are black persons and 2,682,715 (16.8%) are Hispanic. Florida's voting age population is 12,336,038, of whom 1,560,928 (12.7%) are black persons and 1,980,176 (16.1%) are Hispanic. One of the most significant changes to the state's demography has been the increase in the Hispanic population. Between 1990 and 2000, the Hispanic share of the state's population increased from 12.2 to 16.1 percent.

Under the Voting Rights Act, a jurisdiction seeking to implement a proposed change affecting voting, such as a redistricting plan, must establish that, in comparison with the status quo, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." Beer v. United States, 425

U.S. 130, 141 (1976). 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).

The constitutional requirement of one-person, one-vote mandated that the state reapportion the house districts in light of the population growth since the last decennial census. The Florida House of Representatives consists of 120 members elected from single-member districts to two-year terms. Under the existing plan, there are three districts in the five covered counties that are majority minority in total and voting age population. District 102 has a majority Hispanic population and Districts 55 and 59 have majority black populations.

The proposed plan maintains the two districts in which black persons are a majority of the population, but eliminates the majority Hispanic district, which existed in a portion of Collier County. The total Hispanic population in District 102/101 (the district becomes 101 in the proposed plan) was reduced from 72.8 to 29.6 percent, a drop of 43.2 percentage points. The Hispanic voting age population of the district decreased from 74.4 to 27.5 percent, a drop of 46.9 percentage points. The percentage of Hispanic registered voters declined from 61.9 to 12.5 percent, a drop of 49.4 percentage points. Within the context of electoral behavior in the district and the availability of alternative redistricting plans, the state has not met its burden that this reduction will not result in a retrogression in Hispanic voters' effective exercise of their electoral franchise, or that any retrogression was unavoidable.

Of the 16 states covered by the Act's special provisions, seven have partial coverage. In those states, preclearance is required only for changes that affect one or more covered counties or other subjurisdictions. Johnson v. De Grandy, 512 U.S. 997, 1001 n.2 (1994)("[f]ive Florida counties, but not Dade County, are subject to preclearance"); United Jewish Organizations of Williamsburgh, Inc. v. Carey, 430 U.S. 144, 148-149 (1977) (changes had to be submitted "insofar as [they] concerned [the covered] Counties"). In partially covered states, however, statewide changes in voting procedure, that directly affect voting in covered areas, must be precleared under Section 5.

In particular, the state fails to establish its claim that Collier Hispanic voters do not presently elect the candidates of their choice in benchmark District 102, so that their admitted inability to do so in proposed District 101 is not retrogressive

within the meaning of Section 5. In this instance, benchmark plan District 102 was in fact a district in which Hispanic residents could elect a candidate of choice. For example, our investigation has found substantial information that Hispanic voters in District 102 vote for Hispanic candidates when they have the opportunity and that the Anglo community does not support Hispanic candidates. Further, it appears the benchmark district united several communities of interest. The state's experts in Martinez v. Bush, No. 02-20244-CIV (S.D.Fla.)(three-judge court) noted that there are extensive communities of interest joining Collier and Miami-Dade Counties. Not only did these experts find communities of interest among the Hispanic populations of the two counties, but they found common interests in growth, water management, agriculture, and fishing.

Given the area's demographics, the state was required to extend the district to the east, outside of Collier County, to achieve the necessary population to comply with the one-person, one-vote command of the Fourteenth Amendment. Reynolds v. Sims, 377 U.S. 533 (1964). If the state chose to cross into Miami-Dade County, as it did in the previous redistricting, the result would be that Hispanic voters in Collier County would continue to enjoy the effective exercise of their electoral franchise. If the state chose to cross into Broward County, as it does under the proposed plan, that ability is eliminated. Because the plan eliminates that ability, it is retrogressive. Beer v. United States, supra, at 141.

The benchmark for statewide redistricting plans in partially covered states is the level of minority voting opportunity in districts that are a part of a Section 5 covered county. Cf. Lopez v. Monterey County, 525 U.S. 266, 284 (1999) ("Section 5, as we interpret it today, burdens state law only to the extent that that law affects voting in jurisdictions properly designated for coverage"). Here the state has not proposed to meet its Section 5 obligations by affording to Hispanic voters in other covered counties an opportunity as great as the one afforded to Collier County Hispanics in existing District 102. Therefore, since the benchmark plan contains a majority Hispanic district, which includes Collier County, that level of opportunity for Hispanic voters in that county must be preserved in order to avoid retrogression.

The state presents three arguments against an objection in this instance. Two of the three relate to the state's status as a partially covered state, while the third does not. The arguments are: (1) that Florida should be allowed to compensate elsewhere in the state for a retrogressive effect within one or

more of the covered counties; (2) that any retrogression is cognizable under Section 5 only if it can be cured entirely within the covered counties; and (3) that the retrogression was unavoidable because of other statutory or constitutional considerations. We address each in turn.

First, the state seeks to use a statewide increase in the number of districts in which Hispanic voters can elect a candidate of choice to compensate for any retrogression that occurs in covered counties. This suggested approach would require a Section 5 review and assessment of all districts within a state, even where the statutory formula only identified individual counties for coverage. This is contrary to the plain meaning of Congress' coverage determinations and is an approach we must therefore reject.

The state next contends that an increase in the number of covered-county minority residents, who are placed together in proposed District 101, is non-retrogressive, even if the Hispanic voters in that district as a whole have less ability than they had in the benchmark District 102 to exercise their franchise effectively. Collier County does not have sufficient Hispanic population to provide for a majority Hispanic district by itself. Therefore, in order to avoid retrogression as to Hispanics in proposed District 101 compared to existing District 102, the drafters of the house plan would have had to use Dade County (as did existing District 102) and not Broward County (as does proposed District 101) as the source for the non-Collier County population of that district.

The state contends that forcing it to combine Collier County with Miami-Dade County instead of Broward County would effectively require the submission of non-covered voting changes for preclearance. Under Section 5, however, the Department is required to determine how a proposed change -- including a statewide change -- affects minority voters within a covered county. Our analysis here only goes to the effect of the change within Collier, and on that county's minority residents. The configuration of proposed District 101 comes under Section 5 scrutiny only so far as is necessary to determine whether the ability of minority groups in the covered county "to participate in the political process and to elect their choices to office is augmented, diminished, or not affected by the change affecting voting." H.R. Rep. No. 196, 94th Cong., 1st Sess. 60 (1975). The import of the state's argument is that any portion of a district which lies outside a covered county is not subject to Section 5 review, even if it is the total configuration of the

district that determines its effect on minority residents of the covered county.

The state's final argument is that the requirement to draw a majority Hispanic district, partly in Collier County, would violate Section 2 of the Voting Rights Act because the creation of such a district would pack Hispanic voters in Miami-Dade County into ten districts, where a fairly drawn plan would result in eleven districts. Furthermore, as we understand the state's contention, drawing a majority Hispanic district in Collier County while maintaining eleven majority-Hispanic districts statewide could not be done without violating the equal protection principle of Shaw v. Reno, 509 U.S. 630 (1993). We are informed, however, that alternative plans exist that demonstrate that it is possible to devise a majority-Hispanic district that includes Collier County, while maintaining at eleven the total number of south Florida house districts in which Hispanic voters can elect a candidate of choice. Moreover, as stated above, the state concedes that there are significant communities of interest between Miami-Dade and Collier Counties that are respected by benchmark District 102. Therefore, race need not be the predominant factor in drawing such a district.

In sum, the clear effect of District 102/101 can be measured by the ability of Collier County Hispanic voters to elect their candidate of choice in the benchmark, and the fact that the drop in Hispanic population in the proposed district will make it impossible for these Hispanic voters to continue do so.

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 of the Voting Rights Act, 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. On behalf of the Attorney General, I must object to the 2002 redistricting plan for the Florida House of Representatives. Beyond the specific discussion above, however, in all other respects we find that the State has satisfied the burden of proof required by Section 5.

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 redistricting 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 State of Florida plans to take concerning this matter. If you have any questions, you should call Mr. Timothy Mellett (202-307-6262), an attorney in the Voting Section.

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

JAN 11 2000

James M. Skipper, Jr., Esq.
Ellis Easterlin Peagler
Gatewood & Skipper
P.O. Box 488
Americus, Georgia 31709

Dear Mr. Skipper:

This refers to Act No. 759 (1998), which redistricts the Board of Education of Webster County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your most recent responses to our June 29, 1998, request for additional information on November 12, December 8, and December 15, 1999.

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 1990 Census, black persons represent 50.2 percent of the county's total population and 48.0 percent of its voting age population; according to 1999 registration data, black voters represent 41.2 percent of the registered voters.

The existing plan for the school board contains five single-member districts, three of which have majority black populations (65.6%, 55.7% and 70.1%). The proposed plan reduces the minority population in these districts to 57.3 percent, 52.3 percent and 69.8 percent, respectively. The most significant reductions are in Districts 1 and 3, where the black voter registration percentages have been reduced to 45.6 percent and 42.1 percent, respectively. In jurisdictions where voting is racially polarized, as appears to be the case in Webster County, these

reductions in minority voting strength raise serious doubt whether minorities would continue to have an equal opportunity to elect candidates of choice in either district. You have provided no information indicating that the ability of black voters to elect candidates of their choice would not be diminished under the proposed redistricting plan. Thus, it would seem that the proposed plan occasions a prohibited "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

The process of developing a new redistricting plan was initiated after the school district elected a majority black school board for the first time in 1996. We have been advised that black school board members were told that the districts had to be reapportioned and that keeping the existing districts was not an option. However, we have examined each of the reasons asserted by the school district for adopting a new redistricting plan and they appear to be merely pretexts for intentionally decreasing the opportunity of minority voters to participate in the electoral process.

First, the school district maintains that the existing plan adopted in 1993 required revision because the legal description of the districts did not accurately describe the districts as shown on the map of that plan. However, the plan that was submitted and precleared under Section 5 in 1993, and implemented in fact, was the plan as reflected in the map. Thus, the conforming of the legal description to the existing plan required only a technical correction of district descriptions, not a revision of the plan itself.

Under Section 5, the actual boundaries of the districts as delineated on maps accompanying the submission of a redistricting plan are the focus of our determination -- not the legal description of the plan. Consistent with this practice, in our review of the school district's 1993 plan, we treated the boundaries of the districts as described on the submitted maps as determinative. These are also the boundaries we understand the school district to have implemented in subsequent school district elections. In our experience, when discrepancies are discovered between the boundaries submitted by a jurisdiction and precleared under Section 5, and the legal description of the

districts, those discrepancies are resolved by the jurisdiction by conforming the legal description to the boundaries of the districts as shown on the maps of the precleared plan rather than a wholesale revision of the plan.

Second, it was claimed that the proposed plan was adopted to reduce the "malapportionment" in the existing plan. However, the existing plan has an overall deviation of only 5 percent, well within one-person, one-vote standards. The proposed plan increases the overall deviation between districts to 13 percent, a figure which, in the absence of special circumstances, is presumed to exceed permissible constitutional standards. See, e.g., Connor v. Finch, 431 U.S. 407, 418 (1977). Even if the school district was of the belief that districts that would conform to the legal description would be malapportioned and that changes were required, it need only have looked to the existing plan precleared in 1993 to remedy any one-person, one-vote concerns.

Third, it has been suggested that this plan was redrawn to align more closely the election districts of the five-member school board with the three-member board of commissioners. Our review of the current and proposed school board plans indicates that the new plan does not appreciably achieve this result and, in fact, creates some new pockets of population with unique school board/commission district combinations. This justification is also undermined by the fact that the county commission has submitted a new redistricting plan for Section 5 review. When we asked how this change would affect the school board's objective of aligning school board and commissioner districts more closely, we were informed that the school board was unaware of the proposed commission redistricting plan, and that it had no relevance to the school board's proposed plan.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1998 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.

In addition, we understand that at some point between the 1996 and 1998 elections, the term of office of school board members was reduced from six to four years. Our records fail to show that this change affecting voting has been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. If our information is correct, it is necessary that this change either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that it does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group. Changes which affect voting are legally unenforceable without Section 5 preclearance. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the Webster County School District plans to take concerning these matters. If you have any questions, you should call Judybeth Greene, an attorney in the Voting Section, at (202) 616-2350.

Sincerely,

Bill Lann Lee
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

MAR 17 2000

Melvin P. Kopecky, Esq.
Kopecky & Roberts
P.O. Box 128
Washington, Georgia 30673

Dear Mr. Kopecky:

This refers to Act No. 224 (1999), which amends the city charter to change the method of election for the city council to numbered posts with staggered terms (2-3) and a majority vote requirement, and provides an implementation schedule for the City of Tignall in Wilkes County, Georgia, 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 October 4, 1999, request for additional information on January 21 and March 3, 2000.

We have carefully considered the information you have provided, as well as Census data, and information and comments from other interested persons. According to the 1990 Census, the City of Tignall's population is 43 percent black. The city's five-member council is elected at large by plurality vote to four-year concurrent terms. Prior to 1999, only one member of the city council was black. The black councilmember ran for office in 1991 and 1995, and placed fifth in a field of eight candidates in 1991 and third in a field of six candidates in 1995, just one vote ahead of the fourth and fifth place candidates. Based on our analysis of the available information, it appears that voting in Tignall is racially polarized and that minority voters under the existing system have achieved some success by limiting the number of votes that they cast for city council seats in order to elect their candidate of choice. This technique is referred to as single-shot voting. Under the

proposed system, each seat on the council that is up for election will be identified as a separate post and candidates will compete against one another for that specific post. This will eliminate the opportunity minority voters have had under the existing system to boost the effectiveness of their vote for their preferred candidate through single-shot voting.

The imposition of numbered posts and a majority vote requirement, in addition, are more likely to result in head-to-head contests between minority and white candidates for the city council. Minority candidates who are forced into head-to-head contests with white candidates in this racially polarized voting environment are more likely to lose than would be the case under the existing system with concurrent terms and a plurality vote requirement.

We have also examined the implications for minority voters of staggering the terms of councilmembers, so that only two members are elected in one election cycle and three members are elected the next. In this context, it appears that staggering council terms will reduce the opportunity of minority voters to elect their candidate of choice through single-shot voting by reducing the number of positions to be voted upon and, thereby, limiting the effectiveness of this vote-withholding technique. The 1991 and 1995 election results appear to support this conclusion because the minority-preferred candidate won, but placed fifth and third, respectively, in contests in which only a few votes separated the winning and losing candidates.

It appears, therefore, that the city's proposed addition to its at-large election system of numbered posts, a majority vote requirement and staggered terms will lead to a worsening of minority electoral opportunity, which is prohibited by Section 5. See Beer v. United States, 425 U.S. 130, 141 (1976) ("the purpose of [Section] 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise"); 28 C.F.R. 51.54.

We are aware that the city implemented these proposed changes without preclearance in the November 1999 municipal election, and that fewer than five candidates qualified for the five council positions. We are also aware that two of the candidates who did qualify were black. However, the November 1999 election does not appear typical of city council elections in Tignall. First, the election occurred after we requested additional information about the proposed changes in October

1999. There may well have been concern among some candidates about the legality of the election scheme since the city chose to implement the changes in election method without the requisite preclearance under Section 5. Second, the fact that candidates for at least three seats on the council were required under the unprecleared staggered term implementation schedule to select two-year terms may also have resulted in fewer candidates qualifying for city council than the number of seats that were up for election.

The city maintains that the proposed changes were necessary to preclude the possibility of a complete turnover of the city council in a single election year. Yet, the city presented no convincing evidence that this feared occurrence had ever happened or was likely to happen in the future. Moreover, the addition of numbered posts and a majority vote requirement do not address the proffered concern of council turnover, and therefore appear to be wholly without support.

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, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed addition of numbered posts, staggered terms and a majority vote requirement to the method of electing councilmembers for the City of Tignall.

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 change to numbered posts, staggered terms and a majority vote requirement continue to be legally unenforceable. See 28 C.F.R. 51.10.

Because the staggered term implementation schedule is directly related to the objected-to change to staggered terms, no determination by the Attorney General is required or appropriate at this time with respect to the implementation schedule. See 28 C.F.R. 51.22 (b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Tignall, plans to take concerning this matter. If you have any questions, you should call Judybeth Greene (202) 616-2350, an attorney in the Voting Section.

Sincerely,

Bill Lann Lee
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*

October 1, 2001

Tommy Coleman, Esq.
Hodges, Erwin, Hedrick & Coleman
P.O. Box 2320
Albany, Georgia 31702-2320

Dear Mr. Coleman:

This refers to Act No. 384 (1966), which adopts numbered posts for city councilmembers; Act No. 522 (1973), which adopts a majority-vote requirement for the election of city officers; and six annexations (Act No. 1019 (1970), and Ord. Nos. 001, 002 (1981), 01 (1989), 03 (1994), and 01 (2000)) to the City of Ashburn in Turner County, Georgia, 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 December 19, 1995, request for additional information on August 1, 2001.

The Attorney General does not interpose any objection to the six annexations. 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).

Regarding the numbered posts and majority-vote requirement, adopted in 1966 and 1973, respectively, 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 64.7 percent of the city's total population and 58.7 percent of its voting age population; the city's records indicate that as of October 1, 2000, the city had 2,784 registered voters, of whom 1,418 (50.9%) were black.

Prior to 1966, the city council consisted of a mayor and five members, elected at large by plurality vote to two-year, staggered terms. Under that system, the city held multi-seat contests with all candidates running together. Candidates were ranked by the number of votes received and the number of successful candidates was determined by the number of seats being contested. For example, if there were three seats open, then the candidates with the three highest vote totals were elected.

This electoral system, which as a result of the city's failure to obtain Section 5 preclearance of the changes at issue, is the last legally enforceable method of election. Accordingly, it is the benchmark against which the Attorney General determines whether the city has met its burden of establishing that the proposed changes do not have a discriminatory effect and do not have a discriminatory purpose. See Rome v. United States, 446 U.S. 156, 183-85 (1980); 28 C.F.R. § 51.54(b).

Numbered posts frustrate single-shot voting, also known as "bullet voting," a method used by black voters to circumvent the refusal of white voters to support candidates that the minority community supports. Numbered posts create separate city-wide elections for each seat with only the top vote-getter being elected. The results of the 1986 election for Post 4 in Ashburn illustrate the effect of numbered posts. In that election, there were four candidates, and the third place finisher, a black candidate, was supported by the minority community. If we look at this election, not as one just for Post 4, but rather as one for all three positions, the black candidate, by finishing in third place, would have been elected. However, because the election was only for a single position with only the top vote-getter being elected, he was defeated.

A majority-vote requirement also creates head-to-head contests between minority and white candidates. If white voters split their votes among several candidates, the minority community's candidate may receive the highest number of votes in the election, but fall short of a majority. The imposition of a majority-vote requirement results in a head-to-head runoff in which the white vote will control the outcome of the election. In the 1999 election, both John Burgess and Mary Office were supported by the minority community and received the highest number of votes in the primary election. However, each was defeated in the runoff in head-to-head contests with white candidates.

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. Beer v. United States, 425 U.S. 130, 140-42 (1976); see also, 28 C.F.R. § 51.54(a); The burden is on the jurisdiction to show the change is not retrogressive. Reno v. Bossier Parish School Board, 120 S. Ct. 866, 871-72 (2000); see 28 C.F.R. § 51.52(a).

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 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 the majority-vote requirement.

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 adoption of numbered posts and the majority-vote requirement 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 Ashburn plans to take concerning this matter. If you have any questions, you should call David Harris (202-305-2319), an attorney in the Voting Section.

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. 20530

August 9, 2002

Robert T. Prior, Esq.
288 South Main Street
Madison, Georgia 30650

Dear Mr. Prior:

This refers to the 2002 redistricting plans for the Putnam County School District and the Board of Commissioners of Putnam County, Georgia, 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 19, 2002, request for additional information on July 26 and 29, 2002.

We have considered carefully the information you have provided, as well as census data, comments from interested parties, and other information, including the county's previous submissions. As discussed further below, I cannot conclude that the county's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 redistricting plans for the Board of Commissioners and Board of Education.

The 2000 Census indicates that Putnam County has a total population of 18,812 persons, of whom 5,622 (29.9%) are black. The county's voting age population is 14,444, of whom 3,804 (26.3%) are black. Both the county commission and board of education are governed by five-member boards. Voters elect four commissioners or school board members to four-year terms from single-member districts, with the chair of each board being elected at large. The benchmark plan when these plans were originally submitted, the 1992 districting plan, was invalidated by the 11th Circuit Court of Appeals' decision in Clark v. Putnam County, 293 F.3d 1261 (11th Cir. 2002). We agree with you that this leaves the 1982 districting plan as the valid benchmark plan, since it is the most recent (and only) legally-enforceable

districting plan under which elections have been held in Putnam County.

Under the 2000 Census data detailed above, there are two districts under the 1982 benchmark plan, Districts 1 and 2, in which black persons are a majority of the voting age population: District 1 has a black voting age population of 73.3 percent, while District 2 has a black voting age population of 57.6 percent. In contrast, the proposed 2001 redistricting plans contain only one district in which black persons are a majority of the voting age population. According to the information that you provided, the black percentage of the voting age population in proposed District 1 is cut almost in half, to 39.0 percent, while the black percentage of the voting age population in proposed District 2 drops slightly to 56.7 percent.

Within the context of electoral behavior in Putnam County, the county has not established that implementation of this plan will not result in a retrogression in the ability of black voters to effectively exercise their electoral franchise. Moreover, alternative plans developed by the county and others indicate that redistricting plans may be drawn which virtually eliminate the reduction in minority voting strength in proposed Districts 1 and 2.

Our analysis of county elections shows that black voters in Districts 1 and 2 have been electing candidates of choice since at least 1992, and that those candidates are elected on the basis of strong, cohesive black support. Our statistical analysis also shows that white voters do not provide significant support to candidates supported by the minority community. As a result, the proposed reduction in the black voting age percentage in District 1 casts substantial doubt on whether minority voters would retain the reasonable opportunity to elect their candidate of choice under the proposed plan, even if the current incumbent in District 1 continues to run for office.

Our review of the county's benchmark and proposed plans as well as the alternative plans presented to the county, suggests that the significant reduction in black voting age population percentage in District 1 in the proposed plan, and the likely resulting retrogressive effect, was neither inevitable nor required by any constitutional or legal imperative. Illustrative plans demonstrate that it is possible to lessen retrogression in District 1, maintain the minority voting strength in District 2, and meet the county's redistricting criteria. For instance, the county shifted several hundred persons, the majority (65.6 percent) of whom are black, from District 1 under the 1992 plan,