STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

BILL PRYOR
ATTORNEY GENERAL

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

August 14, 2001

VIA FEDERAL EXPRESS
Chief, Voting Section
Civil Rights Division
Department of Justice
1800 G Street, N.W. Room 7254
Washington, D.C. 20006

RE: Submission under Section 5 of the Voting Rights Act of 1965

Dear Sirs:

As required by Section 5 of the Voting Rights Act of 1965, I am enclosing for the review of the Justice Department Act No. 2001-727 of the 2001 First Special Session of the Legislature of Alabama. Act No. 2001-727 provides for redistricting of the state for election of members of the Alabama State Senate. It was enacted into law and approved by the Governor on July 3, 2001.

In this submission, the State will first describe how Alabama went through the process of redistricting. Then, the State will set forth its responses to the criteria set out in the regulations published at 28 CFR § 51.27, and will show that the new plan does not have a retrogressive purpose or effect.

1. The Redistricting Process

In this portion of the submission, the State will show that the process of redistricting was open and offered opportunity for public input. It was also politically partisan, meaning that not all information flowed across party lines. Still, minority legislators and members of the public took advantage of the opportunities presented to influence the outcome. Ultimately, all eight of the African-American members of the Senate voted for Act No. 2001-727, as did 19 of the 27 African-American House members.

Act No. 2001-727 was enacted by the Alabama Legislature in a Special Session that began on June 25, 2001. Prior to that Special Session, the Legislature's Permanent Committee on Reapportionment and its Legislative Reapportionment Office prepared for the process of redistricting. The Legislative Houses and the Committee include minority African-American members, and the Legislative Black Caucus is part of a Democratic Caucus which enjoys a 68-37 majority in the House and a 24-11 majority in the Senate. While the minority African-American members of the Legislature cannot themselves enact legislation without obtaining the support of

white members, they can usually defeat legislation which is strongly opposed by most black citizens. Significantly, Act No. 2001-727 was enacted with the concurrence of all of the Senate's minority members. In the House, 19 minority members voted for the Senate plan, five against, and three were recorded as present. *See* Exhibit A-5.

The Legislature's preparation for redistricting was coordinated by its Permanent Legislative Committee on Reapportionment. That Committee has 22 members and includes members from both Houses and from both parties. It also includes four minority African-American members (Senator Rodger Smitherman, Representative John Hilliard, Representative Yvonne Kennedy, and Representative Thad McClammy). A list of the Committee's members is attached as Exhibit F.

The Committee directs the work of the Legislative Reapportionment Office. That office has a staff of five full-time employees and one part-time employee. It has been working with the Census Bureau on a continuing basis for several years, gathering and reconciling information, and installing new computer hardware and software.

The Committee began the process of redistricting by adopting Guidelines. It solicited comments on the old Guidelines and considered those it received. The new Guidelines list seven criteria for consideration and include 13 subparts. A copy of the Guidelines and the comments received are attached at Exhibits G-1 and G-2. In addition, the Guidelines are published at http://www.legislature.state.al.us/reapportionment/Guidelines.html. (A copy of the 1992 Guidelines is included as Exhibit G-3.)

The Committee had other meetings, but its real work on new districting plans could not begin until Alabama received the results of the 2000 Census. That did not occur until March 14, 2001, in the middle of the Legislature's regular session. The subject of redistricting could not, however, be addressed in the time remaining in the regular session. The regular session had to deal with enacting state budgets during a time when revenues were failing to meet projections. Instead, the political leadership of both parties understood that a special session would be required, and, as the end of the regular session approached, the timing of that session became better defined. For example, at a full-day conference hosted by the Associated Press in Montgomery on April 24, the Supervisor of the Reapportionment Office told the assembled journalists from throughout the State that a special session at the end of June was expected.

While the Regular Session was underway and afterward, the Permanent Legislative Committee on Reapportionment conducted a series of public hearings throughout the State. A copy of the Committee's Notice, which contains a listing of the dates, times, and locations of the hearings, is included as Exhibit I-1. These hearings were transcribed, and a transcript of each of the 18 hearings is included as Exhibits I-2 through I-23. Those transcripts are also available at http://www.legislature.state.al.us/reapportionment/ReapMeetings.html.

Furthermore, we include minutes and transcripts of the meetings of the Permanent Legislative Committee on Reapportionment in Exhibit H, press releases and news clippings in Exhibit J, and memoranda and correspondence in Exhibit K.

In addition to these opportunities for public input, the Legislative Reapportionment Office maintains three workstations. Those workstations were reserved for legislators on Mondays through Thursdays and for the general public on Fridays. Office personnel provided technical assistance to both legislators and members of the public in drawing or evaluating proposals and districting plans.

On May 24, 2001, three days after the regular session ended, the Governor's Chief of Staff convened conference calls with the legislative leadership of both parties to determine their preparedness for and an appropriate date for a special session. During those calls, the date of June 25, 2001, was selected, and the Governor subsequently issued the call. *See* Exhibit M-1. The rules established by the Joint Reapportionment Committee required that plans prepared outside the Committee be submitted 10 days before the special session began. Some ten reapportionment plans, several of which were directed to the State Senate, were filed with the Reapportionment Office by the deadline of Friday, June 15, 2001. Other reapportionment plans were being prepared in the Reapportionment Office.

Ultimately three plans to redistrict the Senate were introduced in the Special Session. Those plans were introduced in SB1 by Senator Jeff Enfinger, SB4 by Senator Charles Langford, and SB5 by Senator Steve French. SB4 was linked to HB55 in the Reed-Buskey plan, and the plan in SB5 was denominated the Fair Senate Plan. A copy of the Senate portion of the Reed-Buskey plan is included as Exhibit D-1, and a copy of the Fair Senate plan is included as Exhibit C-1 to this submission. SB1 was amended on the floor, and redesignated SB2. It passed by a vote of 21 to 7, with another 7 Senators recorded as "present." The House concurred by a margin of 57 to 37, with another 10 representatives recorded as "present." The Governor signed SB2 as Act 2001-727 on July 3, 2001.

The floor debates in the Alabama Legislature are not ordinarily transcribed. An audio feed of proceedings in the Alabama Senate is available over the Internet, but the House proceedings are not likewise available. In the Special Session, no official transcripts were made. The State understands that some persons may have transcripts of some or all of the proceedings, but those transcripts are not available to it.

2. Responses to 28 CFR § 21.27

In compliance with 28 C.F.R. § 51.27 (2000), the following information is submitted:

a. A copy of Act No. 2001-727 is enclosed as Exhibit A-1.

Exhibit A also includes a map of the districts established by Act No. 2001-727 (Exhibit A-2), demographic data relating to the plan (Exhibit A-3), and a compactness study (Exhibit A-4).

b. A copy of the 1993 Final Judgment Regarding Legislative Redistricting and the 1993 Partial Consent Decree Regarding Legislative Redistricting And Requiring Voting Rights Act Preclearance in *Sinkfield v Camp*, which established the current Alabama State Senate districts, are enclosed as Exhibit B-1. (Only the Senate portions of the Partial Consent Judgment are included because this submission relates only to the Senate plan.) The Final Judgment was entered after the State presented evidence that the plans included in the Partial Consent Judgment had been precleared.

Exhibit B also includes a map of the districts established by the 1993 Consent Judgment (Exhibit B-2), demographic data relating to the plan (Exhibit B-3), demographic data showing the changes between 1990 and 2000 (Exhibit B-4), and a compactness study (Exhibit B-5).

c. Statement of Changes – Act No. 2001-727 contains a new redistricting plan for the State Senate that completely supersedes the 1993 plan that was precleared on July 23, 1993. It effects the repealer of Sections 29-1-2.3 and 29-1-2.4 of the Alabama Code. Section 29-1-2.3 was enacted in 1983 and established Senate districts which Section 29-1-2.4 makes effective in 1986 "and until each house of the Legislature, respectively, is reapportioned in accordance with the provisions of the Alabama Constitution." Both of those provisions were superseded by the 1993 plan, but that 1993 plan was the product of judicial intervention, not legislation, so it was not codified.

Sections 3 and 4 of Act No. 2001-727 establish the venue for litigation that contests all or any portion of the Senate plan contained in Act No. 2001-727.

One change that is not apparent on the face of the legislation is the "denesting" of House and Senate districts. In Section 29-1-2.3, the Legislature allocated three House districts to each Senate district, but did not expressly call for nesting three House districts in a Senate district. In the 1993 plan, three House districts were nested in each Senate district in nearly all of the State; the districts were not completely nested in Calhoun County. Again, nesting was the practice, but was not incorporated in legislation.

In the course of preparing for redistricting, the Legislature, through its Permanent Committee, decided not to nest House districts in Senate districts. By deciding not to nest, the Legislature increased the likelihood that a plan would pass. The linkage produced by nesting resulted in objections in one House or the other to the manner of nesting. In 1993, for example, the Reed-Buskey plan passed the House but went

nowhere in the Senate because of what it did to Tuscaloosa. In addition, nesting made it more difficult to defend Senate districts from challenges under *Shaw v. Reno*, 509 U.S. 630 (1993), and its progeny. In the *Sinkfield v. Kelley* litigation before the three-judge federal district court discussed in paragraph o.1 below, for example, the State obtained summary judgment against a plaintiff who challenged HD 73 as racially gerrymandered, but did not prevail against the same plaintiff on his challenge to SD 25, in which HD 73 was nested. Thus, nesting allowed a plaintiff to make a *Shaw* challenge against three House districts by challenging his or her House and Senate districts.

d. Persons making the submission – Charles B. Campbell and John J. Park, Jr., Assistant Attorneys General, State of Alabama, Alabama State House, 11 South Union Street, Montgomery, Alabama 36130, telephone (334) 242-7300.

e. Submitting Authority – Attorney General, State of Alabama. Jurisdiction responsible for change – State of Alabama.

f. Not Applicable.

g. Body responsible for change – State Legislature. Mode of change – Act of State Legislature.

h. The Alabama Constitution of 1901, art. IX, § 200, provides that it is the duty of the State Legislature to fix by law the number of senators and divide the State into as many senatorial districts as there are senators after each decennial census.

i. Date adopted – July 3, 2001.

j. Act 2001-727 is effective upon passage and approval by the Governor, which occurred on July 3, 2001. The act is effective for the senatorial elections of 2002, 2006, and 2010, and until the Senate is reapportioned and redistricted in accordance with the Constitution of Alabama of 1901. Act No. 2001-727 cannot, however, be enforced until precleared pursuant to Section 5 of the Voting rights Act, 42 U.S.C. § 1973c.

k. The change effected by Act No. 2001-727 has not been enforced.

l. The change effected by Act No. 2001-727 affects all of the Senate districts in the State of Alabama as well as venue for any lawsuit challenging the Senate Plan.

m. Reason for change: On March 14, 2001, the United States Census Bureau reported that Alabama's population as of April 1, 2000, was 4,447,100. That figure represents

an increase of 406,513 since the 1990 Census. In addition, that total population produces an ideal population of some 127,060 for the 35 Alabama Senate districts.

Exhibit B-4, which loads the results of the 2000 Census into the Senate districts established by the 1993 Partial Consent Judgment, shows that the 1993 plan no longer satisfies the one-person-one-vote standards applicable to State legislative districts. Twenty-six of the 35 districts varied from the ideal population by more than ±5%. The overall range of deviation was 50.116%. Accordingly, it was necessary for the lines of the Alabama State Senate to be redrawn before the next general election in 2002.

n. Effect on minority groups – Act 2001-727 does not have a retrogressive purpose or effect. It was passed with the concurrence of all of the minority members of the Senate and 19 of the 27 minority members of the House. Those members would certainly have dissented if the plan had a retrogressive purpose or effect.

In addition, a comparison of the 2001 Senate plan with the 1993 plan shows that there is no retrogressive purpose or effect. The 2001 plan has 8 black majority Senate seats just like the 1993 plan. A table showing the total black population and the percentage on a district-by-district basis under the 2001 plan (using 2000 Census data), the 1993 plan (using 2000 Census data), and the 1993 plan (using 1990 Census data) is set out below:

Majority Black Senate Districts with Total Black Pop*						
District	2001 Plan	%	1993 Plan/2000	%	1993 Plan/1990	%
18	82,769	66.865	67,264	67.588	72,528	65.89
19	80,662	66.227	79,706	76.452	69,313	63
20	80,075	65.697	68,198	71.829	70,716	64.28
23	75,380	62.305	71,607	66.081	70,170	63.46
24	75,520	62.409	72,245	68.964	73,286	65.36
26	92,486	71.507	77,552	73.485	77,599	70.34
28	71,653	56.458	72,872	59.269	70,292	61.09
33	79,492	62.451	73,299	70.483	71,973	65.34
Total	637,947	N/A	582,743	N/A	575,877	N/A

* 2001 Plan data have been extracted from Exhibit A-3; 1993 Plan with 1990 data has been extracted from Exhibit B-3; and 1993 Plan with 2000 data comes from Exhibit B-4.

The table shows that the total black population in each district increased over the 1993 plan with the 1990 data. In addition, the total black population in each district other than SD 28 increased over the 1993 plan with the 2000 data. The changes in the percentage of black population show that it was not just the black population that increased in the areas bounded by these district lines. However, with 2000 Census data, all of the majority black districts in the 1993 plan were underpopulated by between –4,108 and –32,115. Thus, population had to be added to each district other than SD 28, and reference to the percentages produced by 1990 Census data has relevance to the question of retrogression. That comparison shows that only four of the eight black majority districts decreased slightly in black percentage of population, and all eight still have clear black voting age majorities. In this regard, the report of Professor Richard L. Engstrom included in Exhibit K shows that a district with a black voting age population of about 55% provides African-Americans with a reasonable opportunity to elect the representative of their choice. Indeed, Representative Locy Baker, the incumbent in HD 85, prevailed with an even lower voting age population.

In that regard, while registered voter and turnout rates for African-Americans vary from county to county, in general, they have risen to levels approximating those of white voters over the past decade. According to Census Bureau estimates for November 1998, white and black voter registration rates (74.1% white, 74.3% black) and turnout rates (51.6% for both whites and blacks) are equal in Alabama. *See* http://www.jointctr.org/databank/databank/stateleveldata/vote/98_by_race_age_state.txt.

Regardless of which baseline comparisons are made, however, it should be clear that much greater attention was given to the objective districting criteria adopted by the Joint Reapportionment Committee in 2001 than in 1993. Furthermore, the 1993 plan was, in essence, a pre-*Shaw* plan. Because of *Shaw v. Reno* and its progeny, the Legislature made a greater effort than before to avoid district shapes that might suggest that race-neutral districting criteria were subordinated to impermissible considerations of race.

Measured in percentage terms, the percentage of black population increased in four districts (SD 18, 19, 20, and 26) and decreased in four districts (SD 23, 24, 28, and 33). Obviously, no finding of retrogressive purpose or effect can reasonably be made when the number of black-majority districts remains the same and the percentage of blacks in the district's total population increases. The decreases in minority population in SD 23, 24, 28, and 33 should not be considered retrogressive either. Those slight reductions were not seen to impede the ability of African-American voters to elect candidates of their choice and were necessary to satisfy other legitimate, nondiscriminatory redistricting considerations.

SD 23 is located in west central Alabama in a region commonly referred to as the Black Belt. Between 1990 and 2000, that region's population grew much more slowly than that

of the rest of the State. SD 23 is no exception. Exhibit B-4, which shows the 1993 districts with the results of the 2000 Census, shows that SD 23 was underpopulated by 14.76%. It had to add population and did so by picking up all of Conecuh County and most of Monroe County and moving into Autauga and Perry Counties. Those additions brought an additional 39,579 people into the district, some 52.47% of whom were black. Still, SD 23 remains 62.305% black.

SD 24 is also a Black Belt district and was underpopulated by 17.533%. It, too, needed to add population. SD 24 picked up population by moving into Bibb and Choctaw Counties. In addition, it added some 6,000 voters in Tuscaloosa County. The added population was approximately evenly split between white and black. The addition of some 18,000 people split on a 50/50 basis combined with declines in the total population of the majority black core counties to produce a decrease in the percentage of black population from 65.36% under the 1993 plan to 62.409%. The change should not be regarded as retrogressive, however, because it is attributable to one-person-one-vote considerations and the change does not materially affect the ability of black voters to elect the candidate of their choice.

SD 28 is in east central Alabama, and southeast of Montgomery. It was slightly underpopulated in that the 2000 Census results showed it to be 4,108 (-3.233%) short of the ideal population. SD 28 gained population in Lee County and took all of Henry County. Both of those additions were majority white, causing the percentage of total population that was black to decline to 56.458%. In this part of the State, however, there were no majority-black communities that could be added to the district without creating a *Shaw* problem. Put another way, Macon County and Bullock County are the only two black-majority counties in this part of the State, and they were already part of the district.

Shaw considerations were important in the drawing of SD 28. The Lee County portions of SD 28 in the 1993 plan were challenged on *Shaw* grounds in the 1997 proceedings in the Circuit Court of Montgomery County in *Rice v. Sinkfield* described in paragraph o.1 below. Even though the State prevailed on those claims, the Legislature took action to reduce the possibility that future *Shaw* claims would be successfully made against SD 28.

SD 33 is located in Mobile County, with the bulk of its population residing in the City of Mobile. It was substantially underpopulated (-18.153%) coming into this round of redistricting so it needed to add people. The people it added were predominantly white. Exhibit B-4 shows that, in the 1993 plan, SD 33 took no population from Chickasaw city or Saraland city. (Those cities were placed in SD 32.) In the 2000 plan, SD 33 draws 13,691 people from Chickasaw and Saraland, and some 90.855% of them are white. The diminution in the percentage of black population thus results from satisfying one-person-one-vote standards. Even so, the total population of SD 33 remains more than 60% black.

o. Past or pending litigation –

1. Past litigation – The current legislative plan is the product of a 1993 Consent Judgment entered in the case of *Sinkfield v. Camp*. In 1997, the constitutionality of that case was challenged, and aspects of the challenge were litigated in state and in federal court. While the State prevailed, it would be unwise to disregard the courts' rulings on the merits simply because they were affirmed or reversed on other grounds.

In May 1997, John and Camilla Rice filed suit in federal court challenging the constitutionality of the legislative plan. They claimed that the districts in which they lived (SD 27 and 28 and HD 79 and 83, all of which are located in east-central Alabama near Auburn) were the product of unconstitutional racial gerrymandering, their votes were unconstitutionally diluted, and the plan failed to achieve precise population equality to the extent practicable. A three-judge federal district court was convened pursuant to 28 U.S.C. § 2284. In mid-August 1997, the three-judge federal district court directed the Rices to move to intervene in *Sinkfield v. Camp*. The Rices moved to intervene, and the Circuit Court of Montgomery County granted those motions.

Other plaintiffs moved to intervene in the federal lawsuit filed by the Rices but did not follow the Rices to state court. Those plaintiffs made similar one-person-one-vote, vote dilution, and *Shaw* claims. With respect to the *Shaw* claims, the following challenges were made:

Name	Districts	General Area of House District
Andrew Thompson	SD 28, HD 82	East of Montgomery
Peggy Kelley	SD 30, HD 88	North of Montgomery
Daniel P. Brown	SD 25, HD 73	Montgomery
Ricardo Montiel	SD 21, HD 63	Tuscaloosa
Genae Spinks	SD 25, HD 75	Montgomery
Bibb Gunter	SD 29, HD 86	Dothan in southeast Alabama
Karen Outlaw	SD 30, HD 89	Southeast Alabama
Gonzalo Montiel	SD 34, HD 101	Mobile
Kelly Brasher	SD 14, HD 41	Shelby County, south of Birmingham

The state court litigation involving the Rices proceeded to judgment first. In November 1997, the Circuit Court of Montgomery County entered judgment denying the Rices' claims. *See* Exhibit L-1. The Rices appealed. In December 1998, the Alabama Supreme Court dismissed the Rices' appeal on the ground that it was moot. *Rice v. Sinkfield*, 732 So.2d 993 (Ala. 1998) (Exhibit L-2) The Rices did not file a petition for certiorari.

In mid-1999, the three-judge federal district court reactivated the case before it. In the course of the proceedings, the court:

- Held that the remaining plaintiffs' one-person-one-vote and vote dilution claims were barred by res judicata and that Andrew Thompson's *Shaw* claim as to SD 28 was likewise barred. *Thompson v. Smith*, 52 F.Supp.2d 1364 (M.D. Ala. 1999) (three-judge court) (Exhibit L-3).

- Allowed Kelly Brasher to dismiss her *Shaw* claims which were directed to SD 14 and HD 41 with prejudice. (Exhibit L-4)

- Granted the State's Motion for Summary Judgment in its favor and against Peggy Kelley on her *Shaw* claim against HD 88. (Exhibit L-5)

- Granted the State's Motion for Summary Judgment in its favor against Andrew Thompson on his *Shaw* claim against HD 82. (Exhibit L-6)

- Refused, on procedural grounds, to allow Gonzalo Montiel to amend his complaint to restate the House District he was challenging. Gonzalo Montiel alleged that he lived in HD 101, but, in the course of the litigation, learned that he lived in HD 100. He asked to be allowed to amend his complaint but the three-judge federal district court found that the request came too late. (Exhibit L-7)

- Granted the State's Motion for Summary Judgment in its favor and against Daniel P. Brown on his *Shaw* claim against HD 73. (Exhibit L-8)

As a result of these rulings, the three-judge court heard testimony and took evidence regarding the *Shaw* compliance of five Senate districts (SD 21, 25, 29, 30, and 34) and four House districts (HD 63, 75, 86, and 89). After a six day trial and post-trial briefing, the court found that four Senate districts (SD 21, 25, 29, and 30) and three House districts (HD 63, 75, and 86) were the products of unconstitutional racial gerrymandering. The State prevailed on the *Shaw* claims directed at SD 34 and HD 89. A copy of the three-judge court's opinion is included as Exhibit L-9.

The State appealed from the district court's judgment. On appeal, the Supreme Court of the United States held that the plaintiffs lacked standing under *United States v. Hays*, 515 U.S. 737 (1995), in that the "primary focus" of their challenge was not the districts in which they resided but the adjoining black-majority districts. *Sinkfield v. Kelley*, 531 U.S. 28 (2000). (Exhibit L-10) The State had advanced this argument throughout the proceedings, and one member of the three-judge federal district court had agreed, albeit in dissent. The Supreme Court vacated the district court's decision and

remanded with instructions to dismiss. On January 4, 2001, the district court dismissed the action on the authority of *Sinkfield v. Kelley*.

Through the trial, the State was advised that at least two federal judges believed that the 1993 configuration of SD 21, 23, 24, 25, 26, 29, 30, and 31 was constitutionally suspect. Those districts are the districts the federal district court held to be unconstitutionally racially gerrymandered and the adjoining black-majority districts. In addition, the State was advised that at least two federal judges believed that the 1993 plan's splitting of a number of municipalities, including Montgomery, Dothan, Fort Deposit, Evergreen, Abbeville, Grove Hill, Thomasville, Monroeville, and Linden, was constitutionally suspect because the splits followed racial lines. *See* Exhibit L-9 at 1311, 1313.

2. Pending Litigation: As of the date of this submission, an attempt to vacate the 1993 Consent Judgment and two lawsuits alleging that the State has not and cannot redistrict its Legislature are pending.

On or about January 22, 2001, John and Camilla Rice (the Rices in *Sinkfield v. Rice*) filed a Motion for Relief from, and to Vacate Partial Consent Decree and Final Judgment in the Circuit Court of Montgomery County. The motion was filed under Alabama Rule of Civil Procedure 60(b), which allows relief from judgments on six specified grounds. The Circuit Court of Montgomery County denied the Rices' Motion, and they appealed. The appeal is now pending in the Alabama Supreme Court.

The State opposed the Rices' Motion in the Circuit Court of Montgomery County. On appeal, the State has argued that the Circuit Court's denial of the Motion should be affirmed. After the Legislature enacted Act Nos. 2001-727 and 2001-729 and the Governor signed them, the State moved to dismiss the appeal as moot. It noted that, with preclearance of these Acts, the 1993 Consent Judgment would be superseded. Until the 2002 elections, assuming preclearance, however, the lines drawn in the 1993 plan need to remain in place to provide the basis for a special election to fill a vacancy that might result from a legislator's death or departure from office. The Alabama Supreme Court has not yet ruled on the appeal.

In addition, two "placeholder" lawsuits involving claims that relate to Legislative redistricting are pending in the United States District Court for the Southern District of Alabama. A third lawsuit is pending in the Circuit Court of Montgomery County. Those lawsuits are styled:

Barnett, et al. v. State of Alabama, et al., Civil Action No. 01-0433-BH-S in the United States District Court for the Southern District of Alabama, Southern Division;

Montiel v. Davis, et al., Civil Action No. CV-01-0447-BH-S in the United States District Court for the Southern District of Alabama, Southern Division; and

Rice, et al. v. English, et al., CV-2001-2311-HA, in the Circuit Court of Montgomery County, Alabama

The federal lawsuits were filed before the Legislature started its Special Session on June 25, 2001. In each of those complaints, the plaintiff alleges that the current 1993 districts cannot be used again in 2002 because they violate one-person-one-vote standards. They further allege that the Legislature has not, cannot, or both, accomplish the work necessary to redistrict. The State filed a copy of Act Nos. 2001-727 and 2001-729, and moved to dismiss without prejudice or to stay. (The State also moved to dismiss the claims against certain defendants with prejudice on the ground that they were not proper parties defendant.) The district court ordered the plaintiff in each case to file a response to the motion on or before August 3, 2001.

A request for a three-judge court has been made in each case, but the district court does not appear to have acted on it. Instead, it may be waiting to review the plaintiff's responses and determine whether it may act without requesting a three-judge court.

A copy of the complaint, the defendants' motion to dismiss or, in the alternative, motion to stay, and the plaintiffs' response in each federal case are enclosed as Exhibits L-11 and L-12, respectively.

The case of *Rice v. English* was filed in the Circuit Court of Montgomery County during the week of August 6, 2001, and no response has been filed. A copy of the complaint in *Rice v. English* is included as Exhibit L-13.

p. The redistricting plan for the Alabama Senate established by the 1993 Partial Consent Decree Regarding Legislative Redistricting And Requiring Voting Rights Act Preclearance in *Sinkfield v. Camp* was precleared by the Department of Justice on July 23, 1993.

3. Other Information

q. A compact disk containing the block assignment files specified in 28 C.F.R. § 51.28(a)(5) is included as Exhibit E. The disk includes block assignment files for the plans enclosed as Exhibits A-1, B-1, C-1, and D-1. A map of each of these plans, as requested in 28 C.F.R. § 51.28(b), is enclosed as Exhibits A-2, B-2, C-2, and D-2, respectively. The demographic information referred to in 28 C.F.R. § 51.28(a)(1) is included as Exhibits A-3 and B-3. Parallel demographic information for the alternative plans is included as Exhibits C-3 and D-3.

r. Minority contacts:

As minority contacts, the State lists: (1) the incumbent African-American members of the Alabama Senate; (2) the African-American members of the Alabama House; and (3) other African-American citizens of Alabama. The State notes that each of the African-American members of the Senate voted in favor of Act 2001-727. Nineteen of the African-American members of the House also voted in favor of Act 2001-727.

In the House, five members voted "No" and three members voted "Present," but the State does not believe that any of those votes were based on the perception that Act 2001-727 had a retrogressive purpose or effect. Rather, the State believes that Representative George Bandy voted "No" because he did not like the way his House district (HD 83) was drawn. He wanted that district, which had been challenged on *Shaw* grounds in 1997, to include the black portions of Auburn, but that could not be done without inviting another *Shaw* challenge. In any event, his vote was driven by dissatisfaction with a portion of the House plan, not the Senate plan. The State believes that Representative Barbara Boyd voted "No" because Act 2001-727 splits Calhoun County between two districts. Under the 1993 plan, Calhoun County had formed its own, unnested district. This complaint has no racial component and should not be considered to be relevant to the question of retrogression.

The State believes that the three remaining "No" votes by Representatives James Buskey, Laura Hall, and Yvonne Kennedy were based on a disagreement over whether nesting should continue. As noted above, one effect of nesting was to make it more difficult to defend both House and Senate districts against *Shaw* challenges. Again, the State does not believe that nesting is relevant to the question of retrogression.

With respect to the "Present" votes, the State notes that each member's desk has three buttons, "Yes," "No," and "Abstain." Those not pressing any of those buttons are listed as "Present." The State believes that Representative Joseph Mitchell had a complaint about his House district. That complaint was not sufficient to induce him

to vote against the Senate plan. The State is not certain that Representatives Bryant Melton and Bill Clark were present in the chamber when the vote occurred.

(1) MINORITY SENATORS

George H. Clay
120 South Main Street
PO Box 830299
Tuskegee, AL 36083
Phone: (334) 727-6210

Sundra Escott-Russell
PO Box 8343
Birmingham, AL 35218
Phone: (205) 798-1600

Charles D. Langford
Suite 205 Bailey Building
400 South Union Street
Montgomery, AL 36104
Phone: (334) 269-2563

Edward B. "E.B." McClain
3826 Troy Terrace
Brighton, AL 35020
Phone: (205) 808-7721

Hank Sanders
One Union Street
PO Box 1290
Selma, AL 36702-1290
Phone: (334) 875-9264

Rodger M. Smitherman
Wilson Building
2029 2nd Avenue N.
Birmingham, AL 35203
Phone: (205) 322-0012

Charles Steele, Jr.
2615 Stillman Blvd.
Tuscaloosa, AL 35401
Phone: (205) 759-5736

Vivian Figures ✓

(2) MINORITY REPRESENTATIVES

Demetrius C. Newton
Speaker Pro Tem
1820 7th Ave. No., Suite 108
Birmingham, AL 35203
Phone: (205) 252-9203

Locy L. "Sonny" Baker
115 Bryant Street
Abbeville, AL 36310
Phone: (334) 556-5310

George C. Bandy
1307-A Glenn Circle
Opelika, AL 36801
Phone: (334) 749-0051

Lucius Black
PO Box 1469
Livingston, AL 35470
Phone: (205) 652-6531

Barbara Bigsby Boyd
PO Box 2132
Anniston, AL 36202
Phone: (256) 236-4603

James E. Buskey
2207 Barretts Lane
Mobile, AL 36617
Phone: (334) 756-6242

William "Bill" Clark
PO Box 10434
Prichard, AL 36612
Phone: (334) 438-1533

Priscilla Dunn
412 North 17th Street
Bessemer, AL 35020
Phone: (205) 481-9817

Johnny Ford
The Gomillion Building
302 South Main Street
Tuskegee, AL 36083
Phone: (334) 727-4035

Laura Hall
PO Box 3274
Huntsville, AL 35810
Phone: (256) 859-2234

Andrew Hayden
PO Box 514
Uniontown, AL 36786-1014
Phone: (334) 628-4671

John R. Hillard
1936 Castleberry Way
Birmingham, AL 35214
Phone: (205) 798-2566

Alvin Holmes
PO Box 6064
Montgomery, AL 36106
Phone: (334) 264-7807

Tommie L. Houston
1501-31st Ave. N.
Birmingham, AL 35207
Phone: (205) 325-7971 or 7975

Thomas E. Jackson
PO Box 656
Thomasville, AL 35151
Phone: (256) 249-9489

Yvonne Kennedy
351 N. Broad Street
Mobile, AL 36603
Phone: (334) 690-6416

John F. Knight, Jr.
PO Box 6300
Montgomery, AL 36106
Phone: (334) 229-4286

Eric Major
221 59th Street
Fairfield, AL 35064
Phone: (205) 786-0612

Edward A. Maull
2002 4th Avenue
Selma, AL 36703
Phone: (334) 872-1466

Thad McClammy
PO Box 250776
Montgomery, AL 36125-0776
Phone: (334) 284-1769

Bryant Melton, Jr.
PO Box 70083
Tuscaloosa, AL 35407
Phone: (205) 391-2616

Joseph Mitchell
465 Dexter Avenue
Mobile, AL 36604
Phone: (334) 473-5020

William Parker
3116 33rd Place North
Birmingham, AL 35207
Phone: (205) 841-6148

George Perdue
PO Box 2473
Birmingham, AL 35201
Phone: (205) 934-2693

Oliver Robinson, Jr.
PO Box 370881
Birmingham, AL 35237-0881
Phone: (205) 841-3326

John W. Rogers, Jr.
1424 18th Street, S.W.
Birmingham, AL 35211
Phone: (205) 934-0364 or 7451

James L. Thomas
PO Box 1089
Camden, AL 35121
Phone: (334) 682-9590

(3) Other Minority Contacts

Dr. Joe Reed
Alabama Education Association
422 Dexter Avenue
Montgomery, AL 36104
(334) 834-9790

Mr. Jerome Gray
Alabama Democratic Conference
445 South McDonough Street
Montgomery, AL 36104
(334) 263-4040

Donald Watkins, Esq.
2170 Highland Avenue South, No. 100
Birmingham, AL 35205-4002
(205) 322-2832

s. Other information - The State notes that the plan comports as closely as practicable to the Guidelines. In this regard, it notes

1. The overall population deviation is 9.728%, which is less than the ± 5% criterion in the Guidelines. That criterion is drawn from *White v. Regester*, 412 U.S. 755 (1973).

2. All districts are contiguous. Exhibit A-4 shows that SD 8 has one single point of contiguity, and SD 9 one hole. Those features reflect county boundaries. They are also present in the Fair Senate Plan and the Reed-Buskey Senate Plan, *see* Exhibits C-4, D-4, which, likewise, use the same county boundaries to separate SD 8 from SD 9.

3. The compactness scores for the districts established in Act No. 2001-727 are satisfactory. *See* Exhibit A-4. Those compactness scores are well above the standards endorsed by the United States Supreme Court in *Bush v. Vera* 517 U.S. 952, 960, 973 (1996).

4. While the plan splits counties, some splitting is inevitable. There are 67 counties of varying populations that must be put into 35 Senate districts. Moreover, the plan splits fewer counties than the other plans that were offered in the Special Session.

5. A complete demographic picture of the State, its counties and its cities is available at U.S. Census Bureau, U.S. Department of Commerce, Profiles of General Demographic Characteristics 2000, 2000 Census of Population and Housing, Alabama, and on the internet at http://www.census.gov/prod/cen2000/dpl/2khol.pdf(May2001).

t. Alternative plans. The alternative plans are included in Exhibits C and D. Each Exhibit includes the bill, a map showing the districts, demographic data, and a compactness study.

A complete index of exhibits is attached hereto. If you have any questions, please do not hesitate to call Charles Campbell at (334)353-3198 or Jack Park at (334)242-7997.

Sincerely,

BILL PRYOR
Attorney General
By:

JOHN J. PARK, JR.
Assistant Attorney General

CHARLES CAMPBELL
Assistant Attorney General

BP:cbc

cc: Honorable Don Siegelman (w/o enclosures)
Honorable Steve Windom (w/o enclosures)
Honorable Seth Hammett (w/o enclosures)
Honorable Jeff Enfinger (w/o enclosures)
Honorable Steve French (w/o enclosures)
Honorable Mark Gaines (with enclosures)

Enclosures

NOTEBOOK 1

Exhibit A	A-1	Act No. 2001-727
	A-2	Map of Senate districts established by Act 2001-727
	A-3	Summary demographic data for Act 2001-727 including: Plan Statistics (2 pages) All districts, total population ethnic breakout (3 pages) All districts, voting age population ethnic breakout (3 pages) Total population ethnic breakout county-level data (5 pages) Total population ethnic breakout city-level data (38 pages) Total population ethnic breakout precinct data (38 pages)
	A-4	District Compactness Measurement Report for Act 2001-727
	A-5	Final Roll Call Vote on SB2
Exhibit B	B-1	Final Judgment Regarding Legislative Redistricting and Partial Consent Decree Regarding Legislative Redistricting and Requiring Voting Rights Act Preclearance, entered in *Sinkfield v. Camp*, CV-93-689-PR, including Senate legislative redistricting plan (House plan omitted)
	B-2	Map of 1993 Consent Decree Senate Plan
	B-3	1990 Reed Buskey Senate Plan Court with map and 1990 demographic data
	B-4	1990 Reed Buskey Senate Plan Court with 2000 demographic data
	B-5	District Compactness Measurement Report for 1993 Consent Decree Senate Plan

NOTEBOOK 2

Exhibit C	C-1	Text of Senate Bill 5
	C-2	Map of Senate districts in Fair Senate Plan 2
	C-3	Summary demographic data for Fair Senate Plan 2, including: Plan Statistics (2 pages) All districts, total population ethnic breakout (3 pages) All districts, voting age population ethnic breakout (3 pages) Total population ethnic breakout county level (5 pages) Total population ethnic breakout city level (39 pages) Total population ethnic breakout precinct data (66 pages)

C-4 District Compactness Measurement Report for Fair Senate Plan 2

Exhibit D

D-1 Text of Senate Bill 4

D-2 Map of Senate districts in Reed Buskey Senate Plan

D-3 Summary demographic data for Reed Buskey Senate Plan, including:
- Plan Statistics (2 pages)
- All districts, total population ethnic breakout (3 pages)
- All districts, voting age population ethnic breakout (3 pages)
- Total population ethnic breakout county level (5 pages)
- Total population ethnic breakout city level (38 pages)
- Total population ethnic breakout precinct level (48 pages)

D-4 District Compactness Measurement Report for Reed Buskey Senate Plan

NOTEBOOK 3

Exhibit E

Compact Disk containing block assignment files in accordance with 28 C.F.R. §§ 51.20 (c)-(e) and 51.28 (a)(5) (with printed Documentation File)

Exhibit	Plan	Filename
A-1	Act 2001-727 Senate Plan	E:\A-1 Act 2001-727 Senate Plan.txt
B-1	1993 Consent Decree Senate Plan	E:\B-1 1993 Consent Decree Senate Plan.txt
C-1	2001 Fair Senate Plan	E:\C-1 2001 Fair Senate Plan.txt
D-1	2001 Reed-Buskey Senate Plan	E:\D-1 2001 Reed-Buskey Senate Plan.txt

Exhibit F

Permanent Legislative Committee on Reapportionment membership for the 1999-2002 quadrennium

Exhibit G

G-1 Reapportionment Committee Guidelines for Legislative, State Board of Education, and Congressional Redistricting, State of Alabama (3/1/01)

G-2 Suggestions Received in Developing Guidelines

G-3 Reapportionment Committee Guidelines for Legislative and Congressional Redistricting adopted 4/2/91, revised 10/21/92

Exhibit H	H-1	Minutes of Meetings of Permanent Legislative Committee on Reapportionment, its Subcommittees, or both
	H-2	Transcript of Meeting of Permanent Legislative Committee on Reapportionment, June 6, 2001
	H-3	Transcript of Meeting of Permanent Legislative Committee on Reapportionment, June 13, 2001
	H-4	Transcript of Meeting of Permanent Full Legislative Committee on Reapportionment, June 25, 2001
	H-5	Transcript of Meeting of Permanent Legislative House Subcommittee on Reapportionment, June 25, 2001
Exhibit I	I-1	Memorandum from Permanent Legislative Committee on Reapportionment with attached hearing notice
	I-2	Transcript of Public Hearing on Reapportionment and Redistricting, February 26, 2001, Muscle Shoals, AL
	I-3	Transcript of Public Hearing on Reapportionment and Redistricting, February 26, 2001, Decatur, AL
	I-4	Transcript of Public Hearing on Reapportionment and Redistricting, February 26, 2001, Huntsville, AL

NOTEBOOK 4

	I-5	Transcript of Public Hearing on Congressional, Legislative, and School Board Redistricting for Alabama, March 1, 2001, Montgomery, AL
	I-6	Transcript of Public Hearing on Congressional, Legislative, and State School Board Redistricting for Alabama, March 5, 2001, Jasper, AL
	I-7	Transcript of Public Hearing on Reapportionment and Redistricting, March 5, 2001, Birmingham, AL
	I-8	Transcript of Public Hearing on Congressional, Legislative and State School Board Redistricting, March 8, 2001, Opelika, AL
	I-9	Transcript of 2001 Public Hearing on Reapportionment and Redistricting, March 12, 2001, Tuscaloosa, AL

NOTEBOOK 5

I-10 Transcript of 2001 Public Hearing on Reapportionment and Redistricting, March 12, 2001, Bessemer, AL

I-11 Transcript of Public Hearing on Congressional, Legislative and State School Board Redistricting, March 15, 2001, Dothan, AL

I-12 Transcript of Public Hearing on Congressional, Legislative and State School Board Redistrictings for Alabama, March 19, 2001, Anniston, AL

I-13 Transcript of Public Hearing on Congressional, Legislative and State School Board Redistrictings for Alabama, March 19, 2001, Gadsden, AL

I-14 Transcript of Public Hearing on Congressional, Legislative and State School Board Redistricting, March 29, 2001, Phenix City, AL

I-15 Transcript of 2001 Public Hearing on Reapportionment and Redistricting, April 2, 2001, Grove Hill, AL

I-16 Transcript of 2001 Public Hearing on Reapportionment and Redistricting, April 5, 2001, Mobile, AL

NOTEBOOK 6

I-17 Transcript of 2001 Public Hearing on Congressional, Legislative, and State School Board Redistricting for Alabama, April 9, 2001, Selma, AL

I-18 Transcript of State of Alabama on Reapportionment and Redistricting, April 12, 2001, Montgomery, AL

I-19 Transcript of Public Hearing on Reapportionment and Redistricting, April 16, 2001, Pelham, AL

I-20 Transcript of Public Hearing on Reapportionment and Redistricting, May 24, 2001, Mountain Brook, AL

I-21 Transcript of Public Hearing on Reapportionment and Redistricting, May 24, 2001, Mobile, AL

I-22 Transcript of 2001 Public Hearing on Reapportionment and Redistricting, Baldwin County, June 5, 2001, Bay Minette, AL

I-23 Transcript of Public Hearing on Congressional, Legislative and State School Board Redistrictings, June 13, 2001, Alexander City, AL

NOTEBOOK 7

Exhibit J — Press Releases and News Clippings

Exhibit K — Permanent Legislative Committee on Reapportionment, Memoranda and Correspondence (including Engstrom Report)

Exhibit L — Litigation File

L-1 *Sinkfield v. Rice*, Civil Action No. 93-689-PR (Cir. Ct. Montgomery County, Ala., Nov. 20, 1997)

L-2 *Rice v. Sinkfield*, 732 So. 2d 993 (Ala. 1998)

L-3 *Thompson v. Smith*, 52 F. Supp. 2d 1364 (M.D. Ala. 1999) (three-judge court)

L-4 *Thompson v. Smith*, Civil Action No. 97-A-715-E (M.D. Ala. Dec. 7, 1999) (three-judge court)

L-5 *Thompson v. Smith*, Civil Action No. 97-A-715-E (M.D. Ala. Dec. 29, 1999) (three-judge court), with opinion of December 30, 1999

L-6 *Thompson v. Smith*, Civil Action No. 97-A-715-E (M.D. Ala. Dec. 20, 1999) (three-judge court), with opinion of January 3, 2000

L-7 *Thompson v. Smith*, Civil Action No. 97-A-715-E (M.D. Ala. Jan. 5, 2000) (three-judge court)

L-8 *Thompson v. Smith*, Civil Action No. 97-A-715-E (M.D. Ala. Jan. 6, 2000) (three-judge court), with opinion of January 6, 2000

L-9 *Kelley v. Bennett*, 96 F. Supp. 2d 1301 (M.D. Ala. 2000) (three-judge court), *rev'd sub nom Sinkfield v. Kelley*, 531 U.S. 28 (2000)

L-10 *Sinkfield v. Kelley*, 531 U.S. 28 (2000)

L-11 Pleadings in *Barnett, et al. v. State of Alabama, et al.*, Civil Case No. 01-433-BH-S, in the United States District Court for the Southern District of Alabama, Southern Division, including Summons and Complaint; Motion to Dismiss, or, in the alternative, Motion to Stay; Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss or, in the alternative, Motion to Stay; and First Amended Complaint for Declaratory and Injunctive Relief

L-12 Pleadings in *Montiel v. Davis, et al.*, Civil Action No. 01-447-BH-S, in the United States District Court for the Southern District of Alabama, Southern Division, including Summons and Complaint; Motion to Dismiss or, in the alternative, Motion to Stay; Plaintiff Montiel's Response to State Defendant's Motion to Dismiss or, in the alternative, Motion to Stay; and First Amendment to Complaint for Declaratory, Injunctive, and Other Relief

L-13 Complaint in *Rice, et al. v. English et al.*, Civil Case No. CV-2001-2311-HA, in the Circuit Court of Montgomery County, Alabama

Exhibit M Miscellaneous Documents

M-1 Proclamation of Governor Don Siegelman, June 22, 2001

M-2 Miscellaneous Analysis of Alabama 2000 Census Data