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April 6, 2012

T. Christian Herren
Chief, Voting Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Room 7354-NWB
Washington, D.C. 20530

Re: State of New Hampshire House and Senate 2012 redistricting plans
Submission under Section 5 of the Voting Rights Act
Expedited consideration requested

Dear Mr. Herren:

As counsel for the State of New Hampshire, we the undersigned hereby submit two statewide redistricting plans for administrative preclearance under Section 5, one for each chamber of the New Hampshire General Court, our state legislature.[1]

A. Introduction

The New Hampshire Senate plan, enacted as SB 201 (bill and map attached hereto as Attachments 1 and 2), was enacted on March 23, 2012. The New Hampshire House of Representatives plan, enacted as SB 592 (bill and map attached hereto as Attachments 3 and 4), was enacted on March 28, 2012. Both plans by their terms took effect on the dates of their passage, and are final enactments for Section 5 purposes. This letter describes the plans and other material included in this submission, and explains why New Hampshire believes the plans are entitled to preclearance.

[1] The Department's Section 5 review authority extends only to the purpose or effect of this legislation as it affects members of racial or language minorities in the ten New Hampshire municipalities that are covered under Section 4(a): Rindge, Millsfield, Pinkhams Grant, Stewartstown, Stratford, Benton, Antrim, Boscawen, Newington, and Unity. *See* Guidelines for the Administration of Section 5, 28 C.F.R. Part 51 Appx.

B. Expedited consideration request

This submission is made as promptly as possible following enactment of the submitted plans. We request expedited consideration of this submission for three reasons. First, on June 6, 2012, the filing period opens for candidates for both legislative chambers. Before that date, the Secretary of State and local registrars must perform numerous steps in order to ensure a properly administered filing and election cycle. They must publicize the new districting plans on state websites, along with clarification and education about the House plan's new floterial districts.

Second, since candidates for the 400 House seats must file locally with their town or city clerk, the Secretary of State sends a mailing to all clerks statewide in mid-May with forms for declarations of candidacy. Local clerks need to be aware of the numbers and boundaries of districts under their jurisdiction in order to give candidates competent assistance in completing their filing documents.

Third, New Hampshire is now in the process of perfecting its compliance with Section 5, in consultation with the Civil Rights Division, in order to seek "bailout" from the statute's requirements under Section 4(a) of the Voting Rights Act and 28 C.F.R. § 51.5. The state hopes to complete this process at the earliest possible date, and the present submission is one of the last that needs to be made before the record for bailout is perfected.

C. Background and context of the submitted plans

In 2006, New Hampshire amended its state constitution to allow "floterial" House districts (the amendment did not extend to the Senate). N.H. Laws 2006, CACR 41, *codified at* N.H. Const. Part II, art. 11. The amendment provides in pertinent part as follows:

> When any town, ward, or unincorporated place has fewer than the number of inhabitants necessary to entitle it to one representative, the legislature shall form those towns, wards, or unincorporated places into representative districts which contain a sufficient number of inhabitants to entitle each district so formed to one or more representatives for the entire district. . . . The excess number of inhabitants of a district may be added to the excess number of inhabitants of other districts to form at-large or floterial districts conforming to acceptable deviations.

This amendment was designed to bring New Hampshire redistricting into fuller compliance with the federal Constitution's one-person, one-vote command,

while preserving to the extent possible the state's historical preference that each city or town have its own representatives.[2]

The 2012 decennial redistricting cycle was the first following the 2006 constitutional change. The submitted House plan creates some floterial districts, i.e., districts composed of two or more whole single-member districts. Subjurisdictions affected include Atkinson, Concord, Dover, Hopkinton, Hudson, Litchfield, Manchester, Meredith, New Durham, Pelham, Portsmouth, Rollinsford, Somersworth and Strafford—none of them among the ten New Hampshire localities covered by Section 5. the legislature's intent in devising both submitted plans was to comply with the New Hampshire Constitution, including the 2006 amendment, and at the same time with the federal Constitution and laws, most importantly the one-person, one-vote requirement.

The Senate plan was enacted with Gov. John Lynch's signature, while the House plan was ultimately enacted over his veto. The Governor's veto message is attached hereto as Attachment 43. The sole concerns expressed in that veto message related to representation for certain towns and wards that share representatives with other towns. A letter from House Legal Counsel Edward C. Mosca to Attorney General Michael A. Delaney, April 2, 2012, attached hereto as Attachment 44, explains the House leadership's views concerning the plan, and responds to some of the issues raised in the Governor's veto message.

For Section 5 purposes, it is paramount that no aspect of the legislative debate over the House plan, the Governor's veto of the plan, or the legislative override of that veto had to do with the plan's purpose or effect on any voter or group of voters by race, color or language minority status, nor did the General Court receive comments from any individual or group concerning any such purpose or impact of the submitted plans.

Nevertheless, to facilitate thorough review of the submitted plans under Section 5, New Hampshire will be notifying racial and language minority groups statewide of the pendency of this submission, and of the opportunity to comment on the plans to the Justice Department under 28 C.F.R. § 51.29.

D. Discussion: The submitted plans are free of purpose or effect prohibited by Section 5

This portion of the submission describes the New Hampshire General Court's thinking in drawing the submitted plans, in light of the criteria listed in 28 C.F.R. § 51.57 and 51.59 as factors relevant to the Department's Section 5 review.

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[2] The 2006 constitutional amendment is being submitted separately for administrative preclearance as "enabling" for Section 5 purposes under 28 C.F.R. § 51.15(a).

The submitted plans were necessitated by the evident malapportionment of the state's 2002 legislative districts. The General Court followed its own neutral and objective procedures and parameters for drawing post-2010 Census legislative district lines. See Part E, Materials, *infra*.

The general public, including members of racial and language minority groups, was afforded every opportunity to participate in the proceedings in both chambers of the New Hampshire legislature, and to give comments on the plans and the plan-drawing process. The state legislature allows any member of the public who wishes to comment on any bill to testify before relevant committees of the House and Senate. The public was provided with full notice of all hearings on the submitted plans. No member of the public appeared before the legislature, in person or in writing, to raise any concerns about race or national origin.

In any event, the submitted plans neither dilute, nor fragment, nor overconcentrate racial minority voters, nor do they depart from or disregard objective non-racial districting criteria or existing New Hampshire districting standards to achieve some racial result.

It should be remembered throughout that New Hampshire's racial minority population is exceedingly small. According to the 2010 Census, of the state's total population of 1,316,470, only 2.2 percent are Asian American, and the proportion of African Americans, Hispanics of any race, and Native Americans is lower still. See 2010 Census tables QT-P3 and P3 for New Hampshire, attached hereto as Attachment 4. These proportions are essentially unchanged from the 2000 Census figures used in the statewide redistricting plans that have been in effect until now. See Section 5 submission letters, June 1, 2004, attached hereto as Attachment 15.

The New Hampshire localities with the highest minority percentage of 2010 Census total population are the towns of Pinkhams Grant (covered by Section 5; population 9, white population 6) and Sargents Purchase (not covered by Section 5; population 3, white population 2). See table of total population figures for all New Hampshire localities over 5% minority, attached hereto as Attachment 12. The New Hampshire locality with the most racially diverse population in 2010, as it was in 2000, is the town of Hanover (not covered by Section 5), which contains Dartmouth College. Under the 2010 Census, the Hanover CDP contains a total population of 8,636, of whom 77.5% are non-Hispanic white, 12.4% are Asian, 4.3% are African American, 1.0% are Native American, and 3.9% are of two or more races, while 4.6% are Hispanic of any race. See 2010 Census tables P3 and QT-P3 for Hanover CDP, attached hereto as Attachment 13. With the exception of tiny Pinkhams Grant, mentioned above, the ten New Hampshire localities covered by Section 5 have 2010 Census populations that are 97% to 100% non-Hispanic white.

See table of total population figures for all New Hampshire localities covered by Section 5, attached hereto as Attachment 14.

Furthermore, New Hampshire's minority population is and has always been evenly distributed throughout the state, and there is no evidence that voting in the state is polarized by race. Thus it is unremarkable, and insignificant under Section 5, that no district in either legislative chamber, under either the benchmark plan or the submitted plan, affords or could be expected to afford minority voters a reasonable chance to elect a representative of their choice with no support from other voters.

In short, there is no conceivable way in which the submitted plans are retrogressive under Section 5 with regard to any racial or language minority group, or objectionable on either purpose or effect grounds under the statute.

E. Materials supporting the submission

Accompanying this submission are the following materials developed or considered by either or both chambers of te General Court in their deliberations on the submitted plans, or prepared specifically for this submission as suggested in 28 C.F.R. § 51.53, 51.57 and 51.59. This list includes the attachments referred to *supra.*

Enacted bills and maps.

1. State Senate plan (SB 201), enacted bill.
2. State Senate plan (SB 201), complete map, also available at http://gencourt.state.nh.us/images/sb201.jpeg.
3. State House plan (HB 592), enacted bill.
4. State House plan, complete map, also available at http://gencourt.state.nh.us/house/committees/committee_websites/h48/miscellanous_documents/Maps_for_0030h_and_0056h.pdf.

Population and other data.

5. Revised city wards with 2010 population data.
6. New Hampshire 2010 Census data, statewide and by individual county.
7. New Hampshire county maps with 2010 Census populations.
8. Errata report from Census Bureau correcting Portsmouth and Hampton populations.
9. Apportionment of House seats by county, 2011.
10. History of county apportionment of New Hampshire House seats, March 23, 2011.

11. Apportionment of House seats – Cities, 2011.
12. Current New Hampshire Executive Council districts with 2010 Census populations.
13. 2010 Census group quarters populations in New Hampshire municipalities.
14. Table of total population figures for all New Hampshire localities over 5% minority.
15. 2010 Census tables P3 and QT-P3 for Hanover CDP.
16. Table of total population figures for all New Hampshire localities covered by Section 5.

Background information on the redistricting process.

17. 'Glossary of Redistricting Terms', February 2011.
18. Federal and State Constitutional Provisions and New Hampshire State Laws relative to Redistricting', February, 2011.
19. 'Redistricting Guidelines, 2001 House Redistricting Committee', adopted August 21, 2001.
20. N.H. House and Senate 2004 redistricting plans: Section 5 submission letters
21. National Conference of State Legislatures, Redistricting 2010, Chapter 3: Equal Population, November 2009.
22. Background Information on CACR 41 (2006)', March 4, 2011, by Pam Smarling, House Committee Research.
23. 'Authority for Redistricting in Other States', February 25, 2011, by Pam Smarling, House Committee Research.
24. 'Redistricting in the 1980's; A 50-state Survey', New Hampshire section, by William Gardner, N.H. Secretary of State.

Technical and other materials on interdistrict population deviation.

25. 'Calculating Deviations for House Redistricting', February 7, 2011, by Joel Anderson, House Committee Research.
26. Algebraic Method of Calculating Deviations With Floterial Districts.
27. When the Courts Don't Compute: Mathematics and Floterial Districts in Legislative Reapportionment Cases.
28. Floterial Districts, Reapportionment and the Puzzle of Representation.
29. 2002 Redistricting Committee: Methods of Calculating.

Relevant federal and state court decisions.

30. Boyer v. Gardner, 540 F. Supp. 624, June 4, 1982.

31. Burling v. Chandler, Docket No. 2002-0210, N.H. Supreme Court, July 26, 2002.
32. Reynolds v. Sims, 377 U.S. 533 (1964).
33. Brown v. Thompson, 462 U.S. 835 (1983).
34. Mahan v. Howell, 410 U.S. 315 (1973).
35. Board of Estimate of City of New York v Morris, 489 U.S. 688 (1989).
36. M. David Gelfand and Terry E. Allbritton, Conflict and Congruence in One-Person, One-Vote and Racial Vote Dilution Litigation, 6 Va. J. L. & Pol. 93 (1990).
37. Sorg Letter relative to Reynolds v. Sims.

Background on city ward revisions.

38. Allocation of Representative Seats to Cities; Use of Floterials in City Districts, April 21, 2011, by Pam Smarling, House Committee Research.
39. March 15 letter to cities requesting timeline for revising wards (sample letter).
40. September 23 letter to cities requesting complete information on ward revisions adopted (sample letter).
41. Latest status of ward revision process.

Documents reflecting legislative procedure leading to adoption of the submitted plans.

42. Bill docket, SB 201, also available at http://gencourt.state.nh.us/bill_status/bill_docket.aspx?lsr=2909&sy=2012&sortoption=&txtsessionyear=2012&txtbillnumber=sb201&q=1.
43. Bill docket, HB 592, also available at http://gencourt.state.nh.us/bill_Status/bill_docket.aspx?lsr=727&sy=2012&sortoption=&txtsessionyear=2012&txtbillnumber=hb592.
44. House Special Committee on Redistricting, guidelines and legal principles governing redistricting, also available at http://www.gencourt.state.nh.us/house/committees/committee_websites/h48/committee_guidelines/Guidelines%20and%20Legal%20Principles.pdf.
45. Governor's veto message, House plan, March 23, 2012.
46. Letter from House Legal Counsel Edward C. Mosca to Attorney General Michael A. Delaney, April 2, 2012.

Public hearings on state legislative redistricting, by county.

47. Strafford County Minutes - Oct. 25, 2011
48. Merrimack County Minutes – Oct. 27, 2011

49. Belknap County Minutes - Oct. 18, 2011
50. Carroll County Minutes – Oct. 13, 2011
51. Cheshire County Minutes – Oct. 18, 2011
52. Coos County Minutes – Oct. 25, 2011
53. Grafton County Minutes – Oct. 20, 2011
54. Hillsborough County Minutes – Oct. 13, 2011
55. Rockingham County Minutes – Oct. 20, 2011
56. Sullivan County Minutes - Oct. 27, 2011

Plans adopted by House Special Committee on Redistricting, Dec. 20, 2011

57. Committee amendment to HB 592 (House District Plan, amendment 0056h) (plan ultimately enacted)
58. Statistics for House District Plan
59. Committee amendment to HCO 1 (0055h)

Amendments to House plans presented on Dec. 20, 2011, but not adopted by the Committee

60. Amendment 0053h, entire state (Pierce)
61. Amendment 0059h, Hillsborough (Vaillancourt)
62. Amendment 0060h, Hillsborough (Vaillancourt)
63. Amendment 0039h, Merrimack (Vaillancourt)
64. Amendment 0054h, Belknap (Vaillancourt)
65. Amendment 0058h, Rochester (Keans)

House District Subcommittee amendment to HB 592 (amendment 0030h)

66. Summary of Statistics for 0030h Plan
67. Statistics by County for 0030h Plan
68. House District Subcommittee amendment to HCO 1
69. Maps of 0030h Plan (black and white)
70. Maps of 0030h Plan, adopted Dec. 14, 2011 (color)

Other proposed House plans or partial plans

71. America Votes Plan Summary
72. Revised America Votes Plan, Dec. 14, 2011
73. Merrimack County Plan (Richardson)
74. Merrimack County Plan Maps (Richardson)
75. Revised Plan Summary Dec. 13 (Vaillancourt)
76. Revised Plan Dec. 13 (Vaillancourt)
77. Belknap County Plan (Millham)
78. Hillsborough County (Vaillancourt)

79. Plan options by County (Bowers)
    - Belknap
    - Carroll
    - Cheshire
    - Coos
    - Grafton
    - Hillsborough
    - Merrimack
    - Rockingham
    - Strafford
    - Sullivan
80. Hillsborough County towns (Rowe)
81. Paul Twomey / America Votes
82. Belknap (Parison - spreadsheet)
83. Belknap (Parison - map)
84. Strafford (Parison - spreadsheet)
85. Strafford (Parison - map)
86. Hillsborough (Parison – spreadsheet)
87. Hillsborough (Parison - map)
88. Sullivan (Parison - spreadsheet)
89. Sullivan (Parison - map)
90. Plan Summary (Vaillancourt)
91. Nine County Plan (Vaillancourt)
92. Entire State (Bowers)
93. Maps of Bowers Plan by County
94. Cheshire County (Weber)
95. Grafton (Townsend)
96. Carroll, Conway representation (Buco)
97. Carroll (Wiley)
98. Carroll school districts
99. Cheshire (Pratt)

F. Conclusion

For the foregoing reasons, and as supported in the materials accompanying this submission, the State of New Hampshire respectfully requests that the Department's consideration of the submitted redistricting plans be expedited, and that no objection be interposed to either of the two plans.

We are at the Department's service at the addresses, telephone numbers and e-mail addresses below should any questions arise as to this submission.

Thank you for your consideration.

Sincerely,

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