IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

RICHARD GOODEN, ANDREW JONES, and
EKEYESTO DOSS,

      Plaintiffs,

v.

NANCY WORLEY, in her official capacity as
Alabama Secretary of State; NELL
HUNTER, in her official capacity as
Jefferson County Voter Registrar; and
ANITA GIBSON, WALTER LONG, and MOLLY
MEADOWS in their official capacities as
Houston County Voter Registrars,

      Defendants.

Case No. 2:05-cv-2562

Exhibit 5
November 17, 2003

Charles B. Campbell, Esq.
Assistant Attorney General
11 South Union Street
Montgomery, Alabama 36130

Dear Mr. Campbell:

This refers to Act 2003-313, which makes a number of changes, inter alia, to implement the Help America Vote Act of 2002, 42 U.S.C. 15301 to 15545 ("HAVA"), including: designating the Secretary of State as the chief election official in the State to carry out various responsibilities with the assistance of certain boards and committees; enabling the Secretary of State to promulgate administrative rules, instructions, guidance, and forms to implement various statutes; moving the Office of Voter Registration and its responsibilities under the Office of the Secretary of State; designating the probate judge as the chief election official in each county and chair of the canvassing board; revising procedures for voters on the inactive list to re-identify; revising procedures on absentee voting; revising procedures for registration and absentee voting by military and overseas voters; revising provisions related to registrars; revising procedures for voter information posters; creating procedures for mail-in registrants to provide voter identification; requiring a statewide computerized voter registration list meeting specific standards which will serve as the official list for the conduct of all elections; requiring the statewide list be coordinated with driver license and social security records; creating procedures for provisional voting, including procedures for all voters who fail to provide identification to be notified and allowed to provide identification up to six days after election day; requiring a free access system for voters to determine if their provisional ballot was counted; extending post-election canvass and reporting deadlines; requiring administrative procedures for hearing complaints under Title III of HAVA; creating a state Help America
Vote Fund; creating criminal penalties for providing false information in registering or voting; requiring voting systems to satisfy certain standards on or before January 1, 2005; requiring adoption of standards for what constitutes a vote on each voting system; repealing procedures for marking voters' hands; and repealing certain challenged ballot procedures; Section 1(c) of Act 2003-381, which provides that voters who vote by mail must include a copy of one form of voter identification specified in that Act; the Alabama Attorney General's Opinion of May 30, 2003, which provides that the Secretary of State is the chief State election official under HAVA, and that HAVA requires the Secretary to implement a statewide voter registration list according to specific standards; and the Alabama Attorney General's Opinion of July 31, 2003, which clarifies that existing challenged ballot procedures, rather than provisional balloting procedures in Act 2003-313, will apply to in-person and absentee voters in municipal elections, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on September 17, 2003; supplemental information was received on November 13, 2003.

The Attorney General does not interpose any objection to the specified changes. 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).

Act 2003-313 includes provisions that are enabling in nature. Therefore, any changes affecting voting that are adopted pursuant to this legislation require Section 5 review (e.g., rules, instructions, guidance and forms promulgated by the Secretary of State). See 28 C.F.R. 51.15.

Sincerely,

[Signature]

Joseph D. Rich
Chief, Voting Section
September 15, 2003

VIA FEDERAL EXPRESS

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

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

Dear Sir:

In accordance with Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, we submit for preclearance by the Attorney General of the United States Act No. 2003-313 of the 2003 Regular Session of the Alabama Legislature. Act No. 2003-313 makes numerous changes to Alabama election law. Some, but not all, of these changes are related to compliance with the Help America Vote Act of 2002, Pub. L. 107-252, 116 Stat. 1666 ("HAVA"). We identify HAVA-related changes below in section (c) and in Exhibits C-1, C-2, and C-3. We also submit for preclearance two opinions of the Attorney General of Alabama that explain the manner in which the Act will be interpreted and enforced in the State.

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

(a) A copy of Act No. 2003-313 is attached as Exhibit A.

(b) Act No. 2003-313 adds several new provisions to the Code of Alabama 1975. In addition:

Section 2 of the Act amends sections 17-4-127, 17-4-129, 17-4-130, 17-4-136, 17-4-138, 17-4-150, 17-4-151, 17-4-187, 17-4-210, 17-4-211, 17-4-212, 17-4-213, 17-4-214, 17-4-230, 17-4-231, 17-4-250, 17-4-252, 17-4-253, 17-4-254, 17-4-255, 17-5A-4, 17-5A-5, 17-5A-6, 17-7-13, 17-8-43, 17-9-23, 17-10-4, 17-10-5 (as last amended by Act No. 2001-1097), 17-10-9, 17-10-10, 17-10-23, 17-14-1, 17-14-20, 17-16-31, 17-16-35, 17-16-36, and 17-20-4 of the Code of Alabama 1975 (copies of the prior versions of these Code sections are attached as Exhibit
B-1); and

Section 12 of the Act repeals sections 17-11-1, 17-11-2, 17-11-3, 17-11-4, 17-12-1, 17-12-2, 17-12-3, 17-12-4, 17-12-5, 17-12-6, 17-12-7, 17-12-8, 17-16-23, and 17-16-24 of the Code of Alabama 1975 (copies of the prior versions of these Code sections are attached as Exhibit B-2).

(c) A memorandum summarizing the changes affecting voting made by Act No. 2003-313 is attached hereto as Exhibit C-1 and incorporated herein by reference.


The Attorney General of Alabama also recently issued an opinion explaining that “[t]he Secretary of State is Alabama’s chief election official for the purpose of applying the Help America Vote Act of 2002.” He further concluded that “[t]he Help America Vote Act of 2002 requires the state’s chief election official to be responsible for a single, uniform, official, centralized, interactive, computerized statewide voter registration list.” Opinion to the Honorable Nancy L. Worley, Secretary of State, A.G. No. 2003-156, dated May 30, 2003, at 1 (attached as Exhibit C-3). The opinion interpreted section 303(a)(1)(A) of HAVA, 42 U.S.C.A. § 15483(a)(1)(A) (West 2003), as having the effect “not only to centralize the list itself under the chief state election official, but to require the chief state election official to be ultimately responsible for inputs and changes made to that list, as well as administering access to the list in the elections process.” Id. at 3. We note that this opinion interpreted HAVA itself, and predated Act No. 2003-313, but some of the language in Act No. 2003-313 is identical to the language interpreted in HAVA, and thus this opinion may also guide the manner in which the provisions of Act No. 2003-313 are enforced.


(e) Submitting Authority and jurisdiction responsible for change – State of Alabama.

(f) Not applicable.

(g) Body responsible for change and mode of decision – act of State legislature.
Act No. 2003-313 was adopted pursuant to the Legislature's authority to enact laws generally, see Ala. Const. art. IV, §§ 44–111, as amended, and the Legislature's authority to pass laws regulating elections and primary elections, see Ala. Const. art. VIII, § 190 (as amended by Ala. Const. amend. 41). Act No. 2003-313 was approved by the Governor pursuant to his authority under Ala. Const. art. V, § 125.

Date adopted – Act No. 2003-313 was adopted on June 19, 2003.

Act No. 2003-313 became “effective upon its passage and approval by the Governor,” i.e., June 19, 2003.

Act No. 2003-313 has not been enforced, except that: the former Director of Voter Registration, see Ala. Code § 17-4-211 (1995), has been transferred to the Office of the Secretary of State and is now employed in the Office of the Secretary of State as Supervisor of Voter Registration, as provided in Section 2 of Act No. 2003-313; and the property of the Office of Voter Registration and the remaining fiscal year 2003 General Fund appropriations to the Office of Voter Registration for the Voter Registration Identification Program have been transferred to the Office of the Secretary of State as provided in Section 3 of Act No. 2003-313.


Reason for change: Some of the provisions of Act No. 2003-313 were enacted to comply with the Help America Vote Act of 2002. Other provisions were enacted to make necessary or desirable changes to Alabama election law.

Anticipated effect on minority groups – The State does not anticipate any adverse impact on minority groups as a result of Act No. 2003-313. If anything, the provisions for modernizing the voting systems throughout the State will benefit minority groups, especially those living in economically deprived regions where older voting systems have been used due to lack of funds to purchase more modern equipment.

Past or pending litigation – Act No. 2003-313 has not been the subject of litigation.

Prior practice: As shown in Exhibit P, which attached hereto and incorporated herein by reference, prior practice under the various Code provisions amended or repealed by Act No. 2003-313 was precleared under Section 5, or did not require preclearance.
(q) Other information

Publicity:

Upon preclearance, all state and local election officials will be notified of the preclearance and provided information regarding new and changed election procedures. A voter education and outreach program will be developed to inform the general public of new and changed election procedures.

Minority contacts:

Mr. Jerome Gray
Alabama Democratic Conference
P.O. Box 6233
Montgomery, AL 36106
(334) 263-4040

Hon. Vivian Figures
State Senator
P.O. Box 40536
Mobile, AL 36640
(251) 432-0482

For further information, please contact Charles B. Campbell by telephone at (334) 353-3198 or by electronic mail at ccampbell@ago.state.al.us.

Sincerely,

WILLIAM H. PRYOR JR.
Attorney General
By:

[Signature]

CHARLES B. CAMPBELL
Assistant Attorney General

BP/CBC
Enclosures
cc w/o encl.: Hon. Nancy L. Worley
Hon. James M. Martin
Hon. H. Mac Gipson, Jr.
Hon. Bryant Melton, Jr.
Hon. Steve McMillan
Hon. Ken Guin
Hon. Charles E. Grainger, Jr.
Hon. Roy Wylie Granger, III