

# State of South Carolina



GLENN F. McCONNELL  
PRESIDENT *PRO TEMPORE*  
SOUTH CAROLINA SENATE

ROBERT W. HARRELL, JR.  
SPEAKER OF THE SOUTH CAROLINA  
HOUSE OF REPRESENTATIVES

August 30, 2011

Mr. T. Christian Herren, Jr.  
Chief, Voting Section  
Civil Rights Division  
Room 7254 – NWB  
Department of Justice  
1800 G St., N.W.  
Washington, DC 20006

RE: Submission under Section 5 of the Voting Rights Act: Request for Preclearance of the 2011 South Carolina Congressional Redistricting Plan, H. 3992, Act 75 of 2011

Dear Mr. Herren:

In accordance with the provisions of 42 U.S.C. § 1973c and 28 C.F.R. Part 51, the South Carolina House of Representatives ("SC House") and Senate ("SC Senate") (collectively referred to herein as the "General Assembly") herein submit to the United States Department of Justice ("DOJ") for administrative preclearance a certified copy of H. 3992, a bill passed by the General Assembly, bearing Ratification No. 111 and enacted as Act No. 75 of 2011 ("H. 3992"). This bill, which became effective on August 1, 2011, provides for the redistricting of all of the State's districts for the United States House of Representatives ("Congressional Districts").

Simultaneously with the submission of this administrative preclearance, the General Assembly filed suit in the United States District Court for the District of Columbia seeking judicial preclearance of H. 3992. The General Assembly requests DOJ to preclear H. 3992, thereby mooting the lawsuit.

Pursuant to 28 C.F.R. § 51.27, the General Assembly submits the following information:

- (a) A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting.

**See Exhibit No. 1, contained in DVD No. 1 – A certified copy of H. 3992, as signed by the Governor on August 1, 2011.**

**See Exhibit No. 2, contained in DVD No. 1 – A spreadsheet containing the demographic information for H. 3992.**

**See Exhibit No. 3, contained in DVD No. 1 – Database files for H. 3992.**

- (b) A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed.

**In 2001, the South Carolina General Assembly adopted new redistricting plans for the SC House, the South Carolina Senate, and its Congressional delegation. H. 3003 of 2001 was sent to then Governor James H. Hodges on August 27, 2001. Governor Hodges returned to the General Assembly a veto message for H. 3003 and, on September 4, 2001, the General Assembly failed to override the Governor's veto. Consequently, H. 3003 of 2001 was never enacted into law.**

**Subsequently, various plaintiffs filed a malapportionment lawsuit in the United States District Court for the District of South Carolina, in an action captioned *Colleton County Council v. McConnell*. On March 20, 2002, the three judge panel issued an order implementing court drawn redistricting plans for the South Carolina House, the South Carolina Senate, and South Carolina's six Congressional districts. In the order, the Court stated that its plan "shall be the lawful election districts for each of those bodies for the election scheduled in 2002 and for all subsequent elections until the South Carolina General Assembly, with the approval of the Governor and in accordance with Section 5 of the Voting Rights Act, ends its impasse and enacts a redistricting plan for any or for all of them."**

**In 2002, members of the South Carolina House, South Carolina Senate, and the South Carolina Congressional delegation were elected pursuant to the court-ordered plan. In 2003, the South Carolina General Assembly enacted Act No. 55 (R. 97, S. 591), which became effective on June 2, 2003. Act No. 55 modified the court-ordered plan for the districts of the SC House and SC Senate. However, Act No. 55 did not modify the boundaries for the six Congressional districts. Therefore, members currently serving in the South Carolina districts for the United States House of Representatives were elected pursuant to the court order issued in *Colleton County Council v. McConnell*.**

**See Exhibit No. 4, contained on DVD No. 1 – *Colleton County Council v. McConnell*, 201 F. Supp. 2d 618 (D.S.C. 2002).**

**See Exhibit No. 5, contained on DVD No. 1 – A spreadsheet containing the demographic information based on the 2000 Census for the plan ordered by the Court in *Colleton County Council v. McConnell*.**

**See Exhibit No. 6, contained on DVD No. 1 – A spreadsheet containing the demographic information based on the 2010 Census for the plan ordered by the Court in *Colleton County Council v. McConnell*.**

**See Exhibit No. 7, contained on DVD No. 1 - Database files for the plan ordered by the Court in *Colleton County Council v. McConnell*.**

- (c) A statement that identifies with specificity each change affecting voting for which Section 5 preclearance is being requested and that explains the difference between the submitted change and the prior law or practice.

**See responses to Paragraphs (a) and (b).**

- (d) The name, title, address, and telephone number of the person making the submission.

**The Honorable Robert W. Harrell, Jr.  
Speaker of the South Carolina House of Representatives  
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**The Honorable Glenn F. McConnell  
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- (e) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

**The State of South Carolina is the jurisdiction responsible for the change. Section 4 of H. 3992 designates the Speaker of the House of Representatives and the President *Pro Tempore* of the Senate, in their official capacities, as the official submitting authority.**

- (f) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

**Not applicable. The submission is from the State of South Carolina.**

- (g) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).

**This change was enacted by the South Carolina General Assembly in Act No. 75 and signed into law by the Governor of South Carolina. (R. 111, H. 3992). See Exhibits Nos. 1, 2 and 3.**

- (h) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

**The S.C. House and S.C. Senate enacted Act No. 75 of 2011 in compliance with the General Assembly's duty to carry out decennial reapportionment and in accordance with the Fourteenth Amendment to the United States Constitution, as interpreted by the United States Supreme Court in *Reynolds v. Sims*, 377 U.S. 533 (1964), as well as other Supreme Court and lower federal court decisions applicable to South Carolina. Other authority under which the state of South Carolina undertook the change includes, but is not limited to, the United States Constitution, Amendments X, and XV, and the Voting Rights Act of 1965, as amended. Act No. 75 of 2011 became law after a majority in both houses of the General Assembly voted to pass the bill and the Governor signed it into law.**

- (i) The date of adoption of the change affecting voting.

**H. 3992, bearing Ratification No. 111, was passed by the General Assembly on July 26, 2011 and was signed by the Governor of South Carolina on August 1, 2011.**

- (j) The date on which the change is to take effect.

**This Act took effect upon the Governor's signature on August 1, 2011, and is now subject to the requirement for preclearance pursuant to 42 U.S.C. § 1973c.**

**Following preclearance by DOJ, the plan will become effective for the 2012 elections of members to the South Carolina districts for the U.S. House of Representatives. Pursuant to S.C. Code Ann. §§ 7-11-15 and -210, candidates for the United States House of Representatives must file notices of their candidacy between March 16, 2012 and March 30, 2012. In accordance with S.C. Code Ann. §§ 7-13-10 and -15, the primary election for the districts will be held on June 12, 2012 and the general election for the districts will be held on November 6, 2012.**

- (k) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

**This change has not yet been enforced or administered as it has not yet received preclearance in accordance with 42 U.S.C. § 1973c.**

- (l) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

**The submitted change affects all South Carolina districts for the U.S. House of Representatives.**

- (m) A statement of the reasons for the change.

**See Exhibit No. 8, contained on DVD No. 1 – Explanation of Redistricting Process.**

- (n) A statement of the anticipated effect of the change on members of racial or language minority groups.

**H. 3992 “neither has the purpose nor will have the effect of denying or abridging the right to vote based on account of race or color.” The enacted redistricting plan does not have any discriminatory purpose and will not “lead to a 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). See also 28 C.F.R. § 51.54(a). Under Section 5 of the Voting Rights Act, a redistricting plan impermissibly “denies or abridges the right to vote” if it “has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color ... to elect their preferred candidates of choice.” 42 U.S.C. § 1973c(b). In its 2006 reauthorization of the Voting Rights Act, Congress specified that “[t]he term ‘purpose’ ... shall include any discriminatory purpose.” 42 U.S.C. § 1973c(c). Congress further explained that Section 5’s aim “is to protect the ability of [minority] citizens to elect their preferred candidates of choice.” 42 U.S.C. § 1973c(d); see also *Beer v. United States*, 425 U.S. 130, 141 (1976) (holding that a redistricting plan violates Section 5 if it “would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.”).**

**“The ‘benchmark’ against which a new plan is compared is the last legally enforceable redistricting plan in force or effect.” *Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act*, 76 Fed. Reg. 7470 (Feb. 9, 2011) (*DOJ Guidance*) (citing *Riley v. Kennedy*, 553 U.S. 406 (2008)); see also 28 F.C.R. § 51.54(c)(1). The “comparison of the benchmark and proposed plans at issue is based on “updated census data in each.” *DOJ Guidance*, 76 Fed. Reg. at**

**7471. In these plans, the “ability of [minority] citizens to elect their preferred candidates of choice” in a district – which is protected by Section 5’s anti-retrogression requirement – “either exists or it does not.” *Id.***

***See Exhibit No. 8, contained on DVD No. 1 – Explanation of Redistricting Process.***

- (o) A statement identifying any past or pending litigation concerning the change or related voting practices.

**There is no pending litigation concerning these changes to the South Carolina Congressional Districts.**

**For an account of litigation involving South Carolina’s redistricting after the 2000 Census, please see the response to information requested in 28 C.F.R. 51.27 (b) hereinabove.**

**Simultaneously with the submission of this administrative preclearance, the General Assembly filed suit in the United States District Court for the District of Columbia seeking judicial preclearance of H. 3992.**

- (p) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

**The prior practice was implemented pursuant to the court order in *Colleton County Council v. McConnell*. This court drawn plan was not subject to preclearance.**

- (q) For redistrictings and annexations: the items listed under 51.28(a)(1) and (b)(1); for annexations only: the items listed under 51.28(c)(3).

28 C.F.R. § 51.28(a)(1) – Demographic Information. Total and voting age population of the affected area before and after the change, by race and language group. If such information is contained in publications of the U.S. Bureau of the Census, reference to the appropriate volume and table is sufficient.

***See Exhibit No. 2, contained in DVD No. 1 – A spreadsheet containing the demographic information for H. 3992.***

***See Exhibit No. 5, contained on DVD No. 1 – A spreadsheet containing the demographic information based on the 2000 Census for the plan ordered by the Court in *Colleton County Council, v. McConnell*.***

**See Exhibit No. 6, contained on DVD No. 1 – A spreadsheet containing the demographic information based on the 2010 Census for the plan ordered by the Court in *Colleton County Council, v. McConnell*.**

28 C.F.R. § 51.28(b)(1) – Maps. Where any change is made that revises the constituency that elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or that changes voting precinct boundaries, polling place locations, or voter registration sites, maps in duplicate of the area to be affected, containing the following information:

(1) The prior and new boundaries of the voting unit or units.

**See Exhibit No. 9, contained in DVD No. 1 – Maps of each district as currently established and as set forth in H. 3992.**

**See Exhibit No. 10, contained in DVD No. 1 – Maps detailing Non-Hispanic Black population of each district as currently established and as set forth in H. 3992.**

(r) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in 51.28 and is most likely to be needed with respect to redistrictings, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type.

**Because this item indicates that the items listed in 28 C.F.R. § 51.28 may be needed for consideration regarding the instant redistricting plan submission, please see the information listed below.**

Pursuant to 28 C.F.R. § 51.28, the following supplemental information is provided in connection with this submission:

(a) Demographic information.

(1) Total and voting age population of the affected area before and after the change, by race and language group. If such information is contained in publications of the U.S. Bureau of the Census, reference to the appropriate volume and table is sufficient.

**See response to information requested in 28 C.F.R. § 51-27 (q) above.**

- (2) The number of registered voters for the affected area by voting precinct before and after the change, by race and language group.

**See Exhibit No. 11, contained in DVD No. 1 – The annual tally of registered voters for the Primary and General elections held from 2002 through 2010.**

- (3) Any estimates of population, by race and language group, made in connection with the adoption of the change.

**H. 3992 was enacted based upon the 2010 Census data as reflected in the 2011 Bureau of the Census Public Law 94-171 file released to South Carolina on March 23, 2011. No estimates of population were used by the SC House or the SC Senate in enacting H. 3992.**

- (5)(vii) In addition to the information identified in 51.20 (c) through (e), the documentation file accompanying the block level equivalency file shall contain the following information:

- (C) For each plan field, an identification of the plan (e.g., state senate, congressional, county board, city council, school board) and its status or nature (e.g., plan currently in effect, adopted plan, alternative plan and sponsors).

**See Exhibit No. 12, contained in DVD No. 1 – Spreadsheet of sponsors and Block Equivalency Files for amendments to H. 3992. Please note that the numbers assigned to the referenced Senate Floor amendments may not be sequential.**

- (b) Maps. Where any change is made that revises the constituency that elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or that changes voting precinct boundaries, polling place locations, or voter registration sites, maps in duplicate of the area to be affected, containing the following information:

- (1) The prior and new boundaries of the voting unit or units.
- (2) The prior and new boundaries of voting precincts.
- (3) The location of racial and language minority groups.
- (4) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units.
- (5) The location of prior and new polling places.

- (6) The location of prior and new voter registration sites.

**See Exhibit No. 9, contained in DVD No. 1 – Maps of each district as currently established and as set forth in H. 3992.**

**See Exhibit No. 10, contained in DVD No. 1 – Maps detailing Non-Hispanic Black population of each district as currently established and as set forth in H. 3992.**

- (c) Annexations.

**Not applicable.**

- (d) Election returns. Where a change may affect the electoral influence of a racial or language minority group, returns of primary and general elections conducted by or in the jurisdiction, containing the following information:

- (1) The name of each candidate.

**See Exhibit No. 13, contained on DVD No. 1 – Candidate Data for the Primary and General Elections held from 2002 through 2010.**

**See Exhibit No. 14, contained on DVD No. 1 – Election Returns for the Primary and General Elections held from 2002 through 2010.**

- (2) The race or language group of each candidate, if known.

**See Exhibit No. 13, contained on DVD No. 1 – Candidate Data for the Primary and General Elections held from 2002 through 2010.**

- (3) The position sought by each candidate.

**See Exhibit No. 13, contained on DVD No. 1 – Candidate Data for the Primary and General Elections held from 2002 through 2010.**

**See Exhibit No. 14, contained on DVD No. 1 – Election Returns for the Primary and General Elections held from 2002 through 2010.**

- (4) The number of votes received by each candidate, by voting precinct.

**See Exhibit No. 14, contained on DVD No. 1 – Election Returns for the Primary and General Elections held from 2002 through 2010.**

- (5) The outcome of each contest.

**See Exhibit No. 14, contained on DVD No. 1 – Election Returns for the Primary and General Elections held from 2002 through 2010.**

- (6) The number of registered voters, by race and language group, for each voting precinct for which election returns are furnished. Information with respect to elections held during the last ten years will normally be sufficient.

**See Exhibit No. 11, contained in DVD No. 1 – The annual tally of registered voters for the Primary and General elections held from 2002 through 2010.**

**See also Exhibit No. 15, contained in DVD No. 1 – Voter turnout for the Primary and General elections held from 2002 through 2010.**

- (e) Language usage. Where a change is made affecting the use of the language of a language minority group in the electoral process, information that will enable the Attorney General to determine whether the change is consistent with the minority language requirements of the Act. The Attorney General's interpretation of the minority language requirements of the Act is contained in Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 C.F.R part 55.

**Not applicable. The SC House and SC Senate do not believe that Act No. 75 of 2011 affects the use of the language of a language minority group in the electoral process.**

- (f) Publicity and participation. For submissions involving controversial or potentially controversial changes, evidence of public notice, of the opportunity for the public to be heard, and of the opportunity for interested parties to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by minority group members, in fact took place. Examples of materials demonstrating public notice or participation include:

- (1) Copies of newspaper articles discussing the proposed change.

**See Exhibit No. 16, contained on DVD No. 2 – Newspaper articles discussing the South Carolina redistricting process and H. 3992.**

- (2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings and statements regarding where such public notices appeared (e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups).

***See Exhibit No. 17, contained on DVD No. 2 – Public hearing notices and press releases concerning H. 3992 and the South Carolina redistricting process.***

***See also Exhibit No. 18, contained on DVD No. 2 – The Senate Public Participation and Public Submission Policies.***

***See also Exhibit No. 19, contained on DVD No. 2 - Media and special interest group contact lists used by the SC House and SC Senate for distribution purposes of pertinent news related to the redistricting plan for the South Carolina Congressional districts.***

***See also the South Carolina House Redistricting website found at <http://redistricting.schouse.gov>.***

***See also the South Carolina Senate Redistricting website found at <http://redistricting.scsenate.gov>.***

(3) Minutes or accounts of public hearings concerning the proposed change.

***See Exhibit No. 20, contained on DVD No. 2 – Transcripts of public hearings concerning the redistricting process.***

***See Exhibit No. 21, contained on DVD No. 2 – Comments and documents received from the public concerning the redistricting process.***

***See Exhibit No. 22, contained on DVD No. 2 – Audio Recordings of the SC House Election Laws Subcommittee discussion of H. 3992.***

***See Exhibit No. 23, contained on DVD No. 2 – Audio Recordings and Minutes of the SC House Judiciary Committee discussion of H. 3992.***

***See Exhibit No. 24, contained on DVD No. 2 – Transcripts of and Presentations made during the SC Senate Judiciary and Redistricting Subcommittee hearings.***

***See Exhibit No. 25, contained on DVD Nos. 3 - 36 – Video Recordings of the Full House of Representatives and Senate discussion of redistricting and H. 3992.***

- (4) Statements, speeches, and other public communications concerning the proposed change.

**See Exhibit No. 26, contained on DVD No. 2 – Comments made by Senator McConnell concerning the Congressional Redistricting Plan.**

**See also response to information requested in 28 C.F.R. § 51.28 (f)(3) above.**

- (5) Copies of comments from the general public.

**See Exhibit No. 21, contained on DVD No. 2 – Comments and documents received from the public concerning the redistricting process.**

**See Exhibit No. 27, contained on DVD No. 2 – Correspondence received regarding redistricting.**

**See Exhibit No. 28, contained on DVD No. 2 – Congressional Plans submitted to the SC House and SC Senate.**

- (6) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.

**See Exhibit No. 29, contained on DVD No. 2 – Journals of the House and Senate concerning H. 3992.**

- (g) Availability of the submission.

- (1) Copies of public notices that announce the submission to the Attorney General, inform the public that a complete duplicate copy of the submission is available for public inspection (e.g., at the county courthouse) and invite comments for the consideration of the Attorney General and statements regarding where such public notices appeared.

**See Exhibit No. 30, contained on DVD No. 2 – Press Release announcing the submission.**

**See also the South Carolina House Redistricting Website found at <http://redistricting.schouse.gov>.**

**See also the South Carolina Senate Redistricting website found at <http://redistricting.scsenate.gov>.**

- (2) Information demonstrating that the submitting authority, where a submission contains magnetic media, made the magnetic media available to be copied or, if so requested, made a hard copy of the data contained on the magnetic media available to be copied.

**See Exhibit No. 30, contained on DVD No. 2 – Press Release announcing the submission.**

**See also the South Carolina House Redistricting Website found at <http://redistricting.schouse.gov>.**

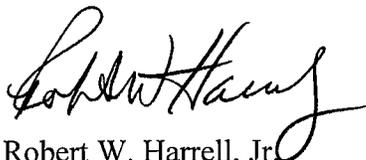
**See also the South Carolina Senate Redistricting website found at <http://redistricting.scsenate.gov>.**

- (h) Minority group contacts. For submissions from jurisdictions having a significant minority population, the names, addresses, telephone numbers, and organizational affiliation (if any) of racial or language minority group members residing in the jurisdiction who can be expected to be familiar with the proposed change or who have been active in the political process.

**See Exhibit No. 31, contained on DVD No. 2 – Contact information for racial minority group members and organizations.**

The SC House and SC Senate believe this to be a valid and complete submission and respectfully requests the Department to receive and review it on that basis. Additionally, the General Assembly respectfully requests that the Department consider this request as expeditiously as possible. Thank you for your attention to this matter and please do not hesitate to contact us to discuss these issues further.

Respectfully submitted,



Robert W. Harrell, Jr.  
Speaker of the South Carolina  
House of Representatives



Glenn F. McConnell  
President *Pro Tempore*  
Senate

Enclosures

Mr. T. Christian Herren, Jr.  
August 30, 2011  
Page Fourteen

cc: without enclosures:

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Governor, State of South Carolina

Bradley Heard, Esquire  
United States Department of Justice

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United States Department of Justice