

April 30, 2018

*By Email*

Dr. Debbie Hamm, Interim Superintendent  
The Sumter School District  
1345 Wilson Hall Road  
Sumter, SC 29150

Members of the Sumter County School District Board of Trustees  
1345 Wilson Hall Road  
Sumter, SC 29150

Members of the Sumter County Legislative Delegation

**Re: Follow Up to Sumter County's School Closures and 2017 Legislation Changing the Size of and Electoral Method for the Board of Trustees**

Dear Dr. Hamm, Members of the Sumter County School District Board of Trustees, and Members of the Sumter County Legislative Delegation:

On Friday, April 6, 2018, LDF, on behalf of the Family Unit, Inc., wrote a [letter](#), describing our significant concerns about proposals to close schools attended by predominately Black students in rural Sumter County.<sup>1</sup> We outlined the key procedural and substantive decisions surrounding the proposal, which revealed a lack of transparency, analysis, and meaningful public input, particularly from the students, families, and communities impacted by the proposed school closures. Based on information and belief, we noted how the School Board had focused *only* on closing rural schools in Sumter County that have majority-Black, low-income student bodies, having never publicly considered or proposed closing any school attended by a majority of white students, as well as how officials failed to analyze and publicly identify the negative impacts of the school closures on predominately Black students and the surrounding communities.<sup>2</sup> We also raised our concern with how the 2017 appointment of two School Board members to what then was a seven-member single-district elected body could provide the necessary votes to ensure the

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<sup>1</sup> In this context, proposal refers to Scott Allan's initial proposal in early April 2017, in his capacity as the School Board's Financial Consultant, to close two to four schools, which the Finance Committee recommend to the School Board on April 21, 2017, as well both of Dr. Hamm's proposals, one on March 12, 2018 to close three schools and the other on March 26 to close two of the initially proposed schools.

<sup>2</sup> Based on National Center for Education Statistics data, the student bodies of F.J. DeLaine Elementary, Mayewood Middle, Rafting Creek Elementary, and Ebenezer Middle Schools are 81%, 84%, 92%, and 67% Black, respectively, and 100% of the student bodies of these schools receive Free and Reduced Priced Lunch, an indicator of poverty. See *2015-16 Common Core Survey*, NATIONAL CEN. FOR ED. STATISTICS (2018), [https://nces.ed.gov/ccd/schoolsearch/school\\_list.asp?Search=1&County=Sumter%20County&State=45&SchoolPageNum=1](https://nces.ed.gov/ccd/schoolsearch/school_list.asp?Search=1&County=Sumter%20County&State=45&SchoolPageNum=1) [*hereinafter* Common Core Survey].

school closures when members of the Board, prior to those appointments, rejected (by a vote of 3-2) such a proposal.

A purpose of our letter was to request that all relevant elected officials, including the School Board, take the necessary time to consider the impact of the school closures *before* making any final decisions—the same concern raised by the School Board Chair Rev. McGhaney as recently as March 26, 2018. Indeed, it was widely reported that: “[a]fter community members said they were opposed to a district consolidation proposal and brought up other issues—such as bus transportation challenges—currently facing schools, Rev. McGhaney wanted to slow down the proposal process.”<sup>3</sup>

Instead of embracing the request, or, at the very least, responding to the concerns that we raised, the newly composed nine-member School Board ultimately approved (by a vote of 5-3)—just as we expressed the concern that they would—the school closure of two predominately Black and low-income schools on April 10, 2018.<sup>4</sup> Among other things, we write to underscore the procedural flaws evident in the decision-making to close these schools, which may violate federal law. To address this concern, we request that you stay your plans to close these schools at least until a transparent, well-studied, and community-involved process has occurred. Granting this request would prevent the already cash-strapped School District from implementing its school closures plans that could be found unconstitutional. This is a particularly important request given the flawed process to date and that this recent decision reflects reportedly just phase one of the County’s plan with respect to school closures.<sup>5</sup> We also write to outline how 2017 legislation, providing for the appointment of two School Board members and subsequent election of those two seats at-large, appears to run afoul of federal laws.

**I. Officials have failed to consider the impact of school closures on impacted students, their parents, and neighborhood communities or seek meaningful input from them.**

Approximately one year ago, on April 21, 2017, the members of the Finance Committee unanimously recommended a school closure proposal to the then seven-member-single-district-elected School Board. Under this proposal, two predominately-Black schools (F.J. DeLaine Elementary and Mayewood Middle Schools) would have closed by the end of the 2017 academic

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<sup>3</sup> Bruce Mills, *Sumter School District Board Chairman Wants to Slow Down Consolidation Process*, THE ITEM (Mar. 29, 2018), <http://www.theitem.com/stories/sumter-school-district-board-chairman-wants-to-slow-down-consolidation-process,305807>; see also Bruce Mills, *Consolidation Proposal Headlines Sumter School Board Meeting*, THE ITEM (Apr. 8, 2018), <http://www.theitem.com/stories/consolidation-proposal-headlines-sumter-school-board-meeting,306333> (“When discussing the proposal at the March 26 meeting in open session, board members seemed mixed on the consolidation plan, based on their comments. Some spoke in favor of Hamm’s proposals; others had concerns.”).

<sup>4</sup> Bruce Mills, *Sumter School Board Votes to Close Two Schools*, THE ITEM (Apr. 10, 2018), <http://www.theitem.com/stories/breaking-sumter-school-board-votes-to-close-two-schools,306499?>

<sup>5</sup> The School Board minutes for the April 10, 2018 meeting are not available online at the time of this letter’s submission. Based on information and belief, the School Board voted on an amendment that clarified that the decision to close the two respective schools serves as the first part of a two-phase plan.

year. The Finance Committee relied on the determination of the Financial Consultant, Mr. Allan, that closing these schools would purportedly save the School District \$3.6 million dollars to help address an unexplained \$6.2 million deficit.<sup>6</sup> Mr. Allan also identified two other majority-Black schools—Rafting Creek Elementary and Ebenezer Middle schools—that the School Board could vote to close in 2018 to purportedly further save money.<sup>7</sup> At the same time, the County has been planning all along to build a new technical high school.<sup>8</sup>

Before making their recommendations, based on information and belief, neither Mr. Allan nor the Finance Committee: (1) conducted a demographic or school facilities study to analyze the impact of the proposed closures; or (2) sought input from impacted students, their parents, and neighborhood community residents. In fact, the Finance Committee did not even make their meeting minutes available to the public online until a day before the School Board voted to close the schools, on April 9, 2018, as a result of the Family Unit’s request for these minutes, even though our understanding is that the Finance Committee has been in place since 2013.

Moreover, following the recommendations by the Financial Consultant and Finance Committee, the School District hired two independent consultant groups, at taxpayers’ expense, to conduct demographic and facilities studies,<sup>9</sup> which according to School District officials would aid in evaluating the impact of the proposed school closures.<sup>10</sup> Based on information and belief,

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<sup>6</sup> Bruce Mills, *Cash-Strapped Sumter District Should Close Two Schools, Finance Officials Say*, THE STATE (Apr. 22, 2017), <http://www.thestate.com/news/local/education/article146157474.html>; *see also Finance Committee Meeting Minutes for Friday April 21, 2017*, SUMTER COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES’ FINANCE COMMITTEE, <https://drive.google.com/file/d/1LdGekI4-Sb-F7Z4ndehXXrwmDyy7wYn/view> [*hereinafter* April 21, 2017 Finance Committee Minutes].

<sup>7</sup> April 21, 2017 Finance Committee Minutes, *supra* note 6 (“Mr. Byrd questioned the proposal to close two schools and plans to build a new tech school. Mr. Allan noted there is no comparison because the small schools are ineffective, and the tech school would meet the needs of the community.”); *Finance Committee Meeting Minutes for Friday, July 27, 2016*, SUMTER SCHOOL DISTRICT BOARD OF TRUSTEES’ FINANCE COMMITTEE, <https://drive.google.com/file/d/1WK0sPg8TZy2xZC-SkEYmZEFOHPFvgtat/view> (“Dr. Hilton expressed concern that if the Board agrees to move forward with the technical high school, it is important that the school district take control.”); *see also* Bruce Mills, *Sumter School District Approves Facilities, Demographics Studies*, THE ITEM (Nov. 15, 2017), <http://www.theitem.com/stories/school-district-moves-forward-with-2-studies,299082>, [*hereinafter* Mills Nov. 15, 2017].

<sup>8</sup> *Id.*; *see also* School Board of Trustee Meeting Minutes for November 13, 2017, SUMTER COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES’ FINANCE COMMITTEE, [https://drive.google.com/file/d/1qhzNwb\\_3h1nnaAWwYZn27xFU9rKH-hE5/view](https://drive.google.com/file/d/1qhzNwb_3h1nnaAWwYZn27xFU9rKH-hE5/view).

<sup>9</sup> Bruce Mills, *CFO: Studies Will Help School District Planning*, THE ITEM (Mar. 1, 2018), <http://www.theitem.com/stories/cfo-consultants-studies-will-help-districts-planning,304309> (reporting that the demographic study costs \$38,000 and the facilities study costs \$199,553).

<sup>10</sup> Bruce Mills, *Sumter School Board Approves Consultants for Population, Facilities Studies*, THE ITEM (Feb. 13, 2018), <http://www.theitem.com/stories/consultants-chosen-for-potential-sumter-school-closure-studies,303446?> (“According to the Facility Committee, chaired by at-large board member William Byrd, both studies will provide a comprehensive look at existing schools’ physical assets and needs and future facility utilization, which could factor into closing certain smaller, low-enrollment schools in the district.”); Mills Nov. 15, 2017, *supra* note 7; Bruce Mills, *Committees, Confusion Lead to Long Board*

however, the findings from these studies have never been shared widely with community members and certainly not before the School Board voted to close two schools on April 10, 2018.

Similarly, the School Board called for the formation of the Development Assistance Committee (DAC) which was to be comprised of community members, school officials and others, whose main purpose was to conduct research and analysis of all the schools in the Sumter School District.<sup>11</sup> This process was to be conducted over a year, and a report was to be given to the School Board from the DAC to inform any decision about whether any of the schools should be closed.<sup>12</sup> Based on information and belief, the DAC never met, nor established any formal mission statements or goals.

It was not until early March of 2018 that Interim Superintendent Dr. Hamm announced that the School District would host six “community listening sessions” over a 10-day period, which ultimately took place just three weeks before the School Board voted to close certain schools.<sup>13</sup> These meetings cannot serve as an adequate substitute for meaningful dialogue and debate, especially without the public’s access to necessary data. Even still, the community sessions revealed one unifying theme—overwhelming community opposition to the school closures. According to one publication:

Parents believe that the issue of enrollment which is cited by the interim superintendent as the primary reason to close the schools should not outweigh the benefits and opportunities provided by keeping the schools open and that the issue of enrollment can and should be first addressed by providing greater equity in school attendance lines ... Parents and community residents say the district has made little effort to increase the number of students who attend these rural schools and has actually bused students to other schools in the district, thus further reducing enrollment. Parents’ concerns for the safety of their children, some of them preschoolers, as they wait at bus stops in the early dark hours of the morning and endure even longer commutes to and from school each day are legitimate. In addition, there is a growing concern that the school district is making up its yet still unexplained financial deficit on the backs of students in rural schools.<sup>14</sup>

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*Meeting*, THE ITEM (May 10, 2017), <http://www.theitem.com/stories/committees-confusion-lead-to-long-board-meeting,288888?> (“Per a request from Michalik at the last board meeting, the appointment of a Development Assistance Committee was listed on Monday’s agenda for the purpose of gaining community input on the implication of school closings.”).

<sup>11</sup> E-mail from Rev. McGhaney, Chair of the Sumter County School District’s Board of Trustees, to Dr. Brenda Williams, Founder and Chief Executive Officer, Family Unit, Inc. (July 12, 2017) (on file with authors) [*hereinafter* E-mail About DAC]; *see also id.*

<sup>12</sup> *Id.*

<sup>13</sup> *See* Bruce Mills, *Sumter School District Demographic Study Shows 10-Year Enrollment Decline*, THE ITEM (Ap. 20, 2018), <http://www.theitem.com/stories/sumter-school-district-demographics-study-shows-10-year-enrollment-decline,307059?> (reporting that Dr. Hamm attended six community “conversation sessions”).

<sup>14</sup> Rep. Wendy C. Brawley & Councilman Chris Sumpter, II, *Rural Communities Should Not be Invisible to Decision Makers*, THE ITEM (Mar. 16, 2018), <http://www.theitem.com/stories/ruralcommunities-should-not-be-invisible-to-decision-makers,305270>.

In that same publication, elected officials in the areas impacted by the proposed school closures asserted:

As elected officials who represent the residents in communities impacted by the potential school closures, we too are concerned about the disproportionate burden the school closures would place on rural school children and their parents. We trust that the school board will not make a hasty decision to permanently close the schools without seeking reasonable alternatives. We also think it unwise that such a critical and permanent decision could be made under the watch of a temporary superintendent.

...

It is also unreasonable and unfair for rural schools to bear the brunt of expanding programs elsewhere within the school district while their schools are closed with little input from the community in the planning.<sup>15</sup>

Notwithstanding, the Interim Superintendent and others continued to advocate for the school closures even before all the listening sessions were completed and despite the feedback from the community in opposition at the few community listening sessions that were held.<sup>16</sup>

The key events surrounding the proposals and ultimate decision to close schools reveal a lack of transparency, analysis, and community input. To begin addressing our concerns, **we ask that you respond to the following questions in writing by no later than close of business on Monday, May 7, 2018:**

1. Did the Financial Consultant, Mr. Allan, or the Finance Committee seek input from directly impacted students and their families prior to making their April 2017 recommendations? If so, please share such documentation.
2. Did the Financial Consultant, Mr. Allan, or Finance Committee conduct a demographic or school facilities studies prior to making their April 2017 recommendations? If so, please share such documentation.
3. When did Templeton Demographics complete the demographic study?
  - a. How did this study inform the School Board's decision to close two schools?

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<sup>15</sup> *Id.*

<sup>16</sup> Bruce Mills, *Hamm: Now is a Good Time to Consider Consolidating Sumter Schools*, THE ITEM (Mar. 18, 2018), <http://www.theitem.com/stories/hamm-now-is-a-good-time-to-consider-consolidation,305292> (“I know I am going to be out of here, and I think that’s a good time to do something as controversial as this [proposal] . . . One of my goals as interim superintendent is to make the job of the next superintendent as attractive and positive as it can possibly be because Sumter deserves to have a great superintendent.”) (internal quotation marks omitted).

- b. Did the School Board review the study and findings before its meeting on April 10?
    - c. Does the School District plan share the study and findings with the public, and, if so, when?
4. Based on information and belief, the Cumming Corporation did not complete the facilities study yet. Is this accurate?
  - a. If so, what is the expected completion date?
  - b. If not, how did this study influence the School Board's decision to close two schools?
  - c. Does the School District plan to share the study and findings with the public, and, if so, when?
5. Did the School Board consider alternatives to closing predominately Black schools in rural Sumter? For example, in response to School Board and community questions about whether rezoning schools may be an alternative to school closures, it is reported the Interim Superintendent asserts that rezoning will not reduce the deficit.<sup>17</sup>
  - a. What is the basis for the Interim Superintendent's assertion?
  - b. Did Dr. Hamm and School Board members meet with community members and discuss maps and zoning options?<sup>18</sup>
  - c. If so, when and where?
6. Dr. Hamm has asserted that magnet programs may increase the enrollment in rural schools. What is the basis for this assertion?
7. Did the School Board consider how much longer students would have to ride the bus door to door (not school to school) under these proposals?<sup>19</sup>
  - a. If so, were those findings released to the public?
  - b. What were they?
8. Did the School Board have data that they considered on whether "students receive a better education when smaller schools are closed?"<sup>20</sup>
  - a. If so, were those findings released to the public?
  - b. What were they?

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<sup>17</sup> April 21, 2017 Finance Committee Minutes, *supra* note 6 ("Dr. Baker informed the committee that the Board asked for other options to closing schools that include redrawing lines."); Bruce Mills, *Hamm: Rezoning Sumter Schools Won't Solve Low-Enrollment, Other Issues*, THE ITEM (Mar. 22, 2018), <http://www.theitem.com/stories/hamm-rezoning-isnt-solution-to-problem,305493>.

<sup>18</sup> *Id.*

<sup>19</sup> April 21, 2017 Finance Committee Minutes, *supra* note 6 ("Mr. Allan noted conversations with Dr. Baker were that the additional bus ride for the students is minimal from the current campuses to the new campuses.").

<sup>20</sup> *Id.*

- c. Has the School Board considered evidence that in fact, consolidation, is not educationally beneficial?<sup>21</sup>
9. Did the School Board consider how much it will cost to effectuate the transfer of students from F.J. DeLaine Elementary School to Cherryvale Elementary School beginning in the 2018 school year? If so, please share such documentation.
10. Did the School Board consider how much it will cost to effectuate the transfer of students from Mayewood Middle School to R.E. Davis Elementary School beginning in the 2018 school year? If so, please share such documentation.
11. Is the School District considering a proposal to building a new technical high school, and if so, has or will the School District commit any funding?<sup>22</sup>

## **II. The School District's school closure plan may violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.**

We are concerned that the School Board's decision to close the two respective schools may violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The consolidation proposals, and School Board's ultimate decision, targeted schools with predominately-Black student bodies. Based on information and belief, the School District and School Board did not publicly identify any schools with majority-white student bodies to consider in its proposals. Particularly in light of the procedural concerns noted below, this targeting of only majority-Black schools raises concerns under the Equal Protection Clause, which prohibits government officials from treating persons differently based on race.<sup>23</sup>

In analyzing whether a government action violates the Equal Protection Clause, courts must undertake a "sensitive inquiry into such circumstantial and direct evidence of intent as may be available" to determine whether the action was motivated by a discriminatory purpose.<sup>24</sup> The plaintiff's burden is to show that the discriminatory purpose was a motivating factor rather than the *primary* or *sole* factor for the decision.<sup>25</sup> The U.S. Supreme Court has articulated a non-exhaustive list of factors that courts may assess in making this inquiry. The factors include: (1) "the historical background of a decision," (2) "the specific sequence of events leading up to the challenged decision," (3) whether the decision departs from normal practices, (4) "contemporaneous statements by members of the decision-making body," and (5) whether the

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<sup>21</sup> See generally *Consolidation Fight-Back Toolkit*, THE RURAL SCHOOL AND COMMUNITY TRUST (Feb. 16, 2011), <http://www.ruraledu.org/articles.php?id=2425>.

<sup>22</sup> *Supra* note 7.

<sup>23</sup> U.S. CONST. amend. XIV § 1; *Washington v. Davis*, 426 U.S. 229, 239 (1976).

<sup>24</sup> *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977).

<sup>25</sup> *Hunter v. Underwood*, 471 U.S. 222, 228 (1985); *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 221 (4th Cir. 2016), *cert. denied sub nom. North Carolina v. N. Carolina State Conference of NAACP*, 137 S. Ct. 1399 (2017).

impact of the decision “bears more heavily on one rac[ial group] than another.”<sup>26</sup> As the Fourth Circuit has noted, each piece of individual evidence cannot be viewed alone; instead, a court must assess the evidence in the “totality of circumstances analysis required by *Arlington Heights*.”<sup>27</sup>

Applying these factors, based on information and belief, a discriminatory racial purpose, at least in part, appears to have motivated the School Board’s decision to close F.J. DeLaine Elementary and Mayewood Middle schools.<sup>28</sup> First, South Carolina’s and Sumter County’s well-documented history of racial discrimination in education—both *de jure* and *de facto*—provides an important context for the School Board’s decision-making process. Indeed, one of the cases prompting the U.S. Supreme Court to outlaw separate and unequal education in public schools arose in South Carolina.<sup>29</sup> For its part, Sumter County did not satisfy its obligations post-*Brown v. Board of Education* by achieving unitary status until 2013, underscoring its long history into the present of racial discrimination.<sup>30</sup> The long pattern of official and unofficial discrimination in education would be compelling for a court to consider when assessing the historical background of the School Board’s decision.

*Second*, the sequence of events leading up to School Board’s vote suggests that race played an improper role. As described above and in our April 6 letter, the School Board and other School District officials failed to study and analyze the impact of the school closures, provide the public with necessary information and data supporting their proposal, or solicit meaningful input from community members. Vice Chairperson of the School Board, Karen Michalik, abstained from casting a vote in the School Board’s April 2017 initial 3-2 decision rejecting school closures because, according to reporting, the proposal lacked “empirical or verified facts on its impact.”<sup>31</sup> The School Board did not rectify this concern by publicizing any impact studies by the April 10, 2018 vote. Moreover, Dr. Hamm’s eagerness to push this proposal forward despite the community’s opposition may begin to explain why the key procedural and substantive decisions lacked transparency. Further, in addition to community members, the School Board Chair Rev. McGhaney voiced his concerns about the rushed process. These examples indicate a key departure from normal, transparent, and democratic procedural sequences.

*Third*, *Arlington Heights* instructs courts to consider contemporaneous statements made by the decision-making body, minutes of its meetings, and reports it relied on. However, many of the reports and studies that were cited by School District officials to make substantive decisions have not been shared with the public. Likewise, relevant committee meeting minutes are not publicly

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<sup>26</sup> *Village of Arlington Heights*, 429 U.S. at 266.

<sup>27</sup> *N. Carolina State Conference of NAACP*, 831 F.3d at 233.

<sup>28</sup> That the current School Board is comprised of six member who are Black does not undermine this concern. See *Shaw v. Reno*, 590 U.S. 630, 631 (1993).

<sup>29</sup> *Briggs v. Elliott*, 103 F. Supp. 920 (E.D.S.C. 1952), *rev’d sub nom. Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294, (1955).

<sup>30</sup> See *Randal v. Sumter Sch. Dist. No. 2*, No. 3:63-CV-1240, 2013 WL 3786344 (D.S.C. July 18, 2013); *Randall v. Sumter School Dist. No. 2*, 232 F.Supp. 786 (1964).

<sup>31</sup> Bruce Mills, *School Board Votes Down the Motion to Close Schools*, THE ITEM (Apr. 25, 2017), <http://www.theitem.com/stories/board-votes-down-the-motion-to-close-schools,288108>.

available yet. Without these materials, we cannot properly assess how the School District and School Board made its decisions or how it evaluated relevant data. Equally concerning, we do not know what was discussed during several key committee meetings without minutes for those meetings. We look forward to gaining access to these materials as soon as possible, as well as to receiving answers to our questions outlined above. To supplement our questions in this letter, we also submitted a Freedom of Information Act request today, which is attached as an **Exhibit A** to this letter.

*Fourth*, the negative impact of the school closures bears more heavily on Black students and their families. Black students account for 81% of the student body at F.J. DeLaine Elementary School, and 84% at Mayewood Middle School, the two schools that the School Board has voted to close.<sup>32</sup> Based on information and belief, Sumter County residents raised concerns that students from these predominately Black schools would continue to endure longer bus routes and commute times to schools. Moreover, several parents reported being concerned about school safety issues for students who are being assigned to new schools, specifically that elementary school and middle school students would be transported to school together potentially creating opportunities for bullying and other unhealthy interactions.<sup>33</sup> The School Board had a choice to ensure that any burdens were spread evenly. In sum, predominately Black schools have been the only target of the School Board's plans to close schools and, thus after the April 10 vote, will bear all the burdens resulting from the school closure plan.

These factors viewed together suggest that a discriminatory purpose, at the very least, partially motivated the School Board's April 10 decision. We are not suggesting members of the School District or School Board harbor personal animosity toward Black students and their families in Sumter County, nor is that necessary to prove to establish a violation of the Equal Protection Clause.<sup>34</sup> However, the combination of circumstances surrounding the decision strongly suggests that race was a motivating factor for the decision to target only rural, predominately Black schools for closure. We will continue to investigate the viability of this claim as we receive more documents and speak with community members.

### **III. The School Board Redistricting may violate Section 2 of the Voting Rights Act and the U.S. Constitution.**

In our initial letter, we indicated our concern that the 2017 legislation, passed over the Governor's veto, may run afoul of federal laws. This legislation initially added two *appointed* (rather than elected) members to the then seven single-member district-based elected seats on the School Board. Four of those seven single-member districts were comprised of a majority of Black voters.<sup>35</sup> The two at-large members were appointed by the Sumter County Legislative Delegation

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<sup>32</sup> Common Corey Survey, *supra* note 2.

<sup>33</sup> Brawley & Sumter II, *supra* note 14.

<sup>34</sup> See *supra* note 28.

<sup>35</sup> R-86 and S. 562, 122nd Gen. Assemb. Reg. Sess. (S.C. 2017), [http://www.scstatehouse.gov/query.php?search=DOC&searchtext=Act%20321%20of%202010&category=LEGISLATION&session=122&conid=9160825&result\\_pos=0&keyval=1220562&numrows=10](http://www.scstatehouse.gov/query.php?search=DOC&searchtext=Act%20321%20of%202010&category=LEGISLATION&session=122&conid=9160825&result_pos=0&keyval=1220562&numrows=10) [*hereinafter* Act. No. 321].

in July 2017, and these members have publicly expressed an intention to run, as incumbents, for *at-large* elections in 2018 under the law.<sup>36</sup> Further, under this bill, the two at-large seats will be converted to two single-member seats, elected on a staggered basis, upon reapportionment after the 2020 census, meaning that the School Board will then be comprised of nine single-member districts.<sup>37</sup>

Prior to this law's enactment, four of the seven single-member school board districts were majority-Black opportunity districts. And now, under this new law, four of the nine seats remain majority-Black because of the addition of two at-large elected seats. In combination with racially polarized voting patterns, which as discussed *infra* likely exist in Sumter, these two at-large seats will not provide Black voters with the equal opportunity to elect their preferred candidates to the School Board. Thus, on its face, this new plan dilutes Black voting power.

Moreover, based on 2010 U.S. Census data, which shows that Black voters are 46% of the population as compared to non-Hispanic white voters who are 49% of the population, we believe that it is possible under the newly composed nine-member body to develop five districts in which Black voters comprise a majority of the voters. Thus, it appears that under the new legislative redistricting plan for the School Board, Black voters have been packed into too few districts. Thus, their voting power is being diluted in this way as well.

Section 2 prohibits voting standards, practices, or procedures, including the maintenance and/or adoption of a districting scheme, that were either enacted with racially discriminatory *intent*, or that have racially discriminatory *results*.<sup>38</sup> One of the chief purposes of Section 2 is to prohibit "minority vote dilution,"<sup>39</sup> which occurs where, as here, a jurisdiction employs a combination of at-large voting and the use of an electoral configuration that "packs" a community of color into a small number of districts when voters of color could be spread more evenly among more districts. At-large voting and packing individually and collectively, therefore, operate to minimize the influence of Black voters and their opportunity to participate equally in the political process and elect their preferred candidates of choice.<sup>40</sup> Indeed, while there is no right to proportional representation, a disparity between the "number of majority-minority voting districts and the minority group's share of the relevant population" is probative of a Section 2 violation.<sup>41</sup>

To establish a vote dilution claim, plaintiffs must show that: (1) the minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district"

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<sup>36</sup> *Id.*; see also Bruce Mills, *Byrd, Disney Plan to Run in Sumter School Board Member Election*, THE ITEM (Apr. 13, 2018), <http://www.theitem.com/stories/byrd-disney-plan-to-run-in-sumter-school-board-member-election,306651?>

<sup>37</sup> Act No. 321, *supra* note 35.

<sup>38</sup> 52 U.S.C. § 10301(a).

<sup>39</sup> See *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Rogers v. Lodge*, 485 U.S. 613, 622-23 (1982) (affirming an at-large system of election was racially neutral when adopted but was maintained for invidious purposes under the Fourteenth and Fifteenth Amendments by diluting Black population's voting strength).

<sup>40</sup> *Colleton County Council v. McConnell*, 201 F.Supp.2d 618, 633 (D.S.C. 2002) (citing *Voinovich*, 507 U.S. 146, 153-54 (1993)); *Gingles*, 478 U.S. at 47-48.

<sup>41</sup> *Johnson v. De Grandy*, 512 U.S. 997, 1025 (1994) (O'Connor, J., concurring).

(*Gingles* one); (2) the minority group is “politically cohesive” (*Gingles* two); and (3) the “majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate” (*Gingles* three).<sup>42</sup> *Second*, Plaintiffs must, under the totality of circumstances, “demonstrat[e] that a challenged election practice has resulted in the denial or abridgment of the right to vote based on color or race.”<sup>43</sup> The Supreme Court has made clear that “whether the political processes are equally open depends upon a searching practical evaluation of the past and present reality and on a functional view of the political process.”<sup>44</sup> This determination “requires an intensely local appraisal of the design and impact of the contested electoral mechanisms.”<sup>45</sup> And Congress has delineated guidelines that are relevant to this inquiry.<sup>46</sup> A plaintiff need not prove “any particular number of factors . . . or that a majority of them point one way or the other.”<sup>47</sup> “[I]t will be only the very unusual case in which the plaintiffs can establish the . . . *Gingles* factors but still have failed to establish a violation of § 2 under the totality of the circumstances.”<sup>48</sup>

Here, prior to the 2017 legislation, a majority of districts were Black opportunity districts, and we believe that a fifth majority-minority district can easily be created for a nine-member body under the 2017 legislation.<sup>49</sup> Moreover, we have reason to believe that racially polarized voting

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<sup>42</sup> *Gingles*, 478 U.S. at 50-51.

<sup>43</sup> 52 U.S.C. § 10301(b); *see also* *LULAC v. Perry*, 548 U.S. 399, 425 (2006).

<sup>44</sup> *Gingles*, 478 U.S. at 45.

<sup>45</sup> *Id.* at 79.

<sup>46</sup> *Gingles*, 478 U.S. at 36-37, 44-45. These factors are: (1) “the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;” (2) “the extent to which voting in the elections of the state or political subdivision is racially polarized;” (3) “the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;” (4) “if there is a candidate slating process, whether the members of the minority group have been denied access to that process;” (5) “the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;” (6) “whether political campaigns have been characterized by overt or subtle racial appeals;” and (7) “the extent to which members of the minority group have been elected to public office in the jurisdiction.” *Gingles*, 478 U.S. at 36-37 (quoting S.Rep. No. 97-417, at 28-29, *reprinted in* 1982 U.S.C.C.A.N. 177, 206-07). In addition to these seven, two additional factors can be considered: (1) “whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group;” and (2) “whether the policy underlying the state or political subdivision’s use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.” *Gingles*, 478 U.S. at 37 (quoting S.Rep. No. 97-417, at 28-29, *reprinted in* 1982 U.S.C.C.A.N. 177, 206-07).

<sup>47</sup> *Gingles*, 478 U.S. at 45-46; *see also* *U.S. v. Charleston County*, 365 F.3d 341, 346 (4th Cir. 2004) (citing S. Rep., *supra*, note 46, at 29) (“[The Senate Report’s Factors] will often be the most relevant ones, [but] in some cases other factors will be indicative of the alleged dilution.”).

<sup>48</sup> *U.S. v. Charleston County*, 316 F.Supp.2d 268, 277 (D.S.C. 2003) (quoting *Teague v. Attala County*, 92 F.3d 283, 293 (5th Cir. 1996)).

<sup>49</sup> We continue to investigate whether the interaction of the structure proposed by the 2017 legislation and use of staggered terms and other features enhances the vote dilution experienced by Black voters in

functions in Sumter just as it has been shown to exist in statewide elections and in other jurisdictions in South Carolina, thereby establishing the second and third *Gingles* factors.<sup>50</sup>

Based on a preliminary analysis, the totality of the circumstances would confirm a finding of dilution. Federal courts have recognized a history of voting discrimination in South Carolina.<sup>51</sup> Moreover, between 1971 and 2011, the federal government has objected to preclearance of discriminatory changes in voting or procedures in South Carolina 122 times.<sup>52</sup> These “discriminatory practices to which the DOJ objected have covered a wide variety of changes that affected nearly every aspect of African-American citizens’ participation in South Carolina’s electoral processes including discriminatory redistricting . . . .”<sup>53</sup>

As we previously noted in our initial letter, Sumter County also has a notorious history of engaging in discriminatory redistricting that federal law has blocked. Indeed, as recently as 2002, the Voting Rights Act stopped the implementation of a discriminatory redistricting plan for Sumter County.<sup>54</sup> Under this plan, the County proposed only three majority-Black opportunity districts

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Sumter County School Board elections. *See, e.g., Charleston County*, 365 F.3d at 351 (“County’s use of staggered terms, residency districts, and a primary nominating system makes it more difficult for minority-preferred candidates to prevail”).

<sup>50</sup> *See, e.g., Jackson v. Edgefield County*, 650 F. Supp. 1176, 1196, 1198-99 (D.S.C. 1986) (“[T]here is substantial and credible evidence which demonstrates that racially polarized voting exists in Edgefield County politics”); *Burton v. Sheheen*, 793 F. Supp. 1329, 1357-58 (D.S.C. 1992), *vacated on other grounds* *Campbell v. Theodore*, 508 U.S. 968 (1993) (in 1992, the parties in *Burton* [a Section 2 challenge to South Carolina’s state and federal redistricting plans] “stipulated that ‘since 1984 there is evidence of racially polarized voting in South Carolina.’”); *Smith v. Beasley*, 946 F. Supp. 1174, 1202 (D.S.C. 1996) (“In South Carolina, voting has been, and still is, polarized by race. This voting pattern is general throughout the state . . . .”); *Colleton County Council v. McConnell*, 201 F.Supp.2d 618, 641 (D.S.C. 2002) (“Voting in South Carolina continues to be racially polarized to a very high degree, in all regions of the state and in both primary elections and general elections. Statewide, black citizens generally are a highly politically cohesive group and whites engage in significant white-bloc voting. Indeed, this fact is not seriously in dispute.”); *U.S. v. Charleston County*, 365 F.3d 341, 349 (4th Cir. 2004) (affirming “voting in Charleston County Council elections is severely and characteristically polarized along racial lines.”); *see also* Ronald Brownstein, *Why Racial Polarization Is Still Central to South Carolina Politics*, THE ATLANTIC (Jan. 21, 2012), <https://www.theatlantic.com/politics/archive/2012/01/why-racial-polarization-is-still-central-to-south-carolina-politics/251765/>.

<sup>51</sup> *Jackson v. Edgefield County* 650 F. Supp. 1176, 1180 (D.S.C. 1986); *Colleton County Council v. McConnell*, 201 F. Supp. 2d 618, 642 (D.C.S. 2002); *City of Columbia*, 850 F.Supp. at 421; *Condon v. Reno*, 913 F. Supp. 946, 949 (D.S.C. 1995).

<sup>52</sup> John C. Ruoff & Herbert E. Buhl, *Voting Rights in South Carolina: 1982-2006*, 17 USC R. OF L. AND SOCIAL CHANGE 643, 655-56 (2008). Since 2008, the Department of Justice submitted two additional Section 2 objection letters. Thomas E. Perez, Asst. Attorney Gen., U.S. Civ. Rights Div., to C. Havird Jones, Jr., Assistant Deputy Attorney General, S.C. Attorney General’s Office (Dec. 23, 2011); Thomas E. Perez, Asst. Attorney Gen., U.S. Civ. Rights Div., to C. Havird Jones, Jr., Senior Assistant Attorney General, S.C. Attorney General’s Office (Aug. 16, 2010).

<sup>53</sup> *Id.*

<sup>54</sup> Ralph F. Boyd, Asst. Attorney Gen., U.S. Civ. Rights Div., to Charles T. Edens, Chairperson, City Council of Sumter, S.C. (June 27, 2002), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/>

even though a fourth could be drawn with a 59% Black voting-age population.<sup>55</sup> Earlier, in 1986, the federal government blocked Sumter from implementing a proposal with similarities to the 2017 legislation. Specifically, it stopped an attempt to increase the size of the City Council from four to six members and change from an at-large to four single-member districts and two at-large seats.<sup>56</sup> There were earlier occasions too when the federal law stepped in to prevent Sumter's discriminatory redistricting.<sup>57</sup>

Moreover, there is well-documented discrimination in many other areas of life in South Carolina generally, as recognized by federal courts,<sup>58</sup> as well as specifically in Sumter, that hinders political participation. For example, stark disparities between Black and white residents in Sumter—on a broad range of socioeconomic measures—reflect the impact of historical and ongoing racial discrimination in South Carolina and Sumter. Demographic data from recent American Community Surveys (ACS) show that Black residents of Sumter suffer unemployment 18.8% at more than two times the rate as white residents 7.2%,<sup>59</sup> and that the median income of Black households in Sumter per year was \$30,442, while white households earned a median income of \$50,235.<sup>60</sup> Similarly, significant racial disparities exist for educational attainment,<sup>61</sup>

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30/SC-2130.pdf.

<sup>55</sup> See *id.*

<sup>56</sup> Wm. Bradford Reynolds, Asst. Attorney Gen., U.S. Civ. Rights Div., to Jack W. Erter, Jr., Partner, Lee, Wilson, Erter & Booth (Apr. 10, 1986), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-1690.pdf>.

<sup>57</sup> Drew S. Davis III, Ass. Attorney Gen., U.S. Civ. Rights Div., to Howard P. King, County Counsel, Sumter County, S.C., (Sept. 27, 1979), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-1280.pdf> (declining to withdraw an objection to the at-large system implemented by Act No. 371 and adopted under the Home Rule Act because it would violate Section 5); J. Stanley Pottinger, Ass. Attorney Gen., U.S. Civ. Rights Div., to Treva G. Ashworth, Attorney General, S.C. (Oct. 1, 1976), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-1240.pdf> (objecting to a proposal to change the form of election for the School Board to an at-large system with a residency requirement and one appointed position because such changes would violate Section 5).

<sup>58</sup> *McConnell*, 201 F.Supp.2d at 642; *Edgefield County*, 650 F.Supp. at 1201; *City of Columbia*, 850 F.Supp. at 423-24.

<sup>59</sup> *Sex by Age by Employment for the Population 16 Years and Over, Data Set: 2012-2016 American Community Survey 5-Year Estimates*, U.S. CENSUS BUREAU (on file with authors). To view this data set, see *American Community Surveys*, U.S. CENSUS BUREAU, <https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/2016/>.

<sup>60</sup> *Median Household Income in the Past 12 Months (In 2016 Inflation-Adjusted Dollars)*, U.S. CENSUS BUREAU (on file with authors). To view this data set, see *American Community Surveys*, U.S. CENSUS BUREAU, <https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/2016/>.

<sup>61</sup> *Id.* The educational attainment for Black Sumter County residents twenty-five years and older is 30.6% for some college or an associate's degree and 14.4% for a bachelor's degree or higher as compared to white residents with 38% and 23.3%, respectively. Equally troubling, 22.9% Black residents in this same age range obtained less than a high school diploma as compared to only 11.1% of white residents.

families living below the poverty line,<sup>62</sup> receipt of food stamps/SNAP by household,<sup>63</sup> and home ownership.<sup>64</sup> These lower socioeconomic status of Sumter's Black community as compared to the city's white community may well further restrict Black voters' ability to participate politically.<sup>65</sup>

On the issue of public education, South Carolina has been found to chronically underfund its public schools, particularly those serving Black students.<sup>66</sup> As we previously noted, all four of the schools considered for closure and the two ultimately closed are located in rural areas of Sumter County that are considered part of South Carolina's Corridor of Shame because of the State's longstanding failure to provide equal educational opportunity.<sup>67</sup>

There also are indicia that the rationale for the 2017 legislation is tenuous and that local officials were unresponsive to concerns about the changes proposed by that legislation. *First*, while one of the expressed reasons for the legislation was to bring more oversight to the Board,<sup>68</sup> it appears nonsensical to appoint at least one Board member to the newly created at-large seats who served on the Finance Committee to the School Board from 2013 into the present, but particularly during the time that the School Board overspent \$6 million dollars.

*Second*, residents in an area where the schools were set for closure (District 70) had no representative at the time of the proposal to close schools in that area, nor representation in that same time period when the delegation proposed the 2017 legislation to add two at-large seats to

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<sup>62</sup> *Id.* Twenty-four percent of Black families live below the poverty line as compared to only of 8% of white families.

<sup>63</sup> *Id.* Nearly 33% of Black households, as compared to 11% of white households, receive food stamps/SNAP.

<sup>64</sup> *Id.* Homeownership rates for white residents is 73.6% and 57.2% for Black residents.

<sup>65</sup> *Thornburg v. Gingles*, 478 U.S. at 36-37, 39, 56 (1986) (noting that typical factors probative of a Section 2 violation include "the extent to which members of the minority group ... bear the effects of discrimination in such areas as education, employment and health," and affirming in part the district court's ruling that an at-large electoral scheme violated Section 2 where the state's Black population had a lower socioeconomic status than its White population) (internal quotation marks omitted).

<sup>66</sup> *Abbeville Cty. Sch. Dist. v. State*, 410 S.C. 619, 624 (2014) (holding the State of South Carolina and various elected officials in their official capacity violated their constitutional duty to ensure that the students of South Carolina receive a minimally adequate education).

<sup>67</sup> *Id.*; see also Ehime Ohue, *At Duke, I Realized How Badly Many South Carolina Schools are Failing Students Like Me*, WASH. POST (July 7, 2017), [https://www.washingtonpost.com/news/grade-point/wp/2017/07/06/at-duke-i-realizedhow-badly-many-south-carolina-schools-are-failing-students-like-me/?utm\\_term=.361289aa15e1](https://www.washingtonpost.com/news/grade-point/wp/2017/07/06/at-duke-i-realizedhow-badly-many-south-carolina-schools-are-failing-students-like-me/?utm_term=.361289aa15e1); see also Anya Kamenetz, *One Student Tries to Help Others Escape a 'Corridor of Shame'*, NPR (May 31, 2016), <https://www.npr.org/sections/ed/2016/05/31/473240474/corridor-of-shame>.

<sup>68</sup> Bruce Mills, *Why Expand School Board?*, THE ITEM (June 8, 2017), <http://theitem.com/stories/lawmakers-say-adding-2-members-will-improve-accountability-transparency,290388/> ("Citing 'bottom line is there is a problem' with the goals of accountability and truth, members of the local legislative delegation explained their rationale . . . for putting a new law in place to add two at-large members to the Sumter School District Board of Trustees immediately.").

the School Board.<sup>69</sup> A Sumter resident notified members of the Sumter Legislative Delegation about her lack of representation concerns relating to the legislative proposal.<sup>70</sup> The resident also questioned (1) whether the bill's sponsor spoke with voters in the rural impacted areas of the County in advance of introducing the bill; and (2) the motivations behind the bill, namely the desire to add two-at large seats on the Board to provide more oversight on that body because of the deficit. This resident stressed that voters had elected the seven member School Board members, and contended they should elect them out if "they are not doing their jobs" rather than have the local delegation, "three of whom don't live in the district [impacted by the closures and redistricting] making the decision for all voters that two more at-large 'eyes' should be added." Ultimately, this resident requested that the bill's sponsor "dismiss the bill," asserting that "[o]ur county has operated well under single-member districts."<sup>71</sup>

Taken together, based on our initial review, there is a compelling argument that vote dilution exists for Sumter School Board elections.

A plaintiff may also challenge a dilutive voting practice as a violation of the Fourteenth and Fifteenth Amendments.<sup>72</sup> "Cases charging that [at-large voting or packing] unconstitutionally dilute[s] the voting strength of racial minorities are . . . subject to the standard of proof generally applicable to Equal Protection Clause cases."<sup>73</sup> As described above, the Supreme Court identified five non-exhaustive factors that guide the Equal Protection inquiry in this context: (1) historical background of discrimination, (2) sequences of events, (3) procedural or substantive deviations from normal decision-making processes, (4) contemporaneous viewpoints expressed by the decision-maker, and (5) discriminatory impact.<sup>74</sup>

Applying these factors as a guide suggests that the 2017 legislation was enacted with a discriminatory purpose, thus potentially violating the Fourteenth and Fifteenth Amendments, as well as Section 2. *First*, as described above, South Carolina and Sumter County's history of official discrimination in voting is well documented. *Second*, based on information and belief, the Sumter County Delegation did not solicit input from directly-impacted communities. *Third*, as described above, residents from House District 70 did not have any representation when the bill was proposed in the Senate, voted on in the Senate and House of Representative initially, or voted on again in both chambers to override the Governor's veto. *Fourth*, the legislation was enacted over the Governor's veto because of his concern that the legislation "deprives the Sumter County electorate

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<sup>69</sup> E-mail from Andrea E. Loney to Members of The Sumter County Legislative Delegation (April 19, 2017) (on file with authors) (noting that "voters in district 70 have no representation in [the] State House of Representatives [at] this time.") [*hereinafter* Letter to Sumter Legislative Delegation]; *see also* Wendy Brawley Sworn in as District 70 Representative, ABC COLUMBIA (June 27, 2017), <http://www.abccolumbia.com/2017/06/27/wendy-brawley-sworn-representative-district-70/>; Act 321, *supra* note 35.

<sup>70</sup> Letter to Sumter Legislative Delegation, *supra* note 69.

<sup>71</sup> *Id.*

<sup>72</sup> U.S. CONST. amend. XIV § 1; *Rogers v. Lodge*, 458 U.S. at 617 (a voting practice "violate[s] the Fourteenth Amendment if 'conceived or operated as purposeful devices to further racial discrimination'").

<sup>73</sup> *Rogers v. Lodge*, 458 U.S. at 617; *N. Carolina State Conference of NAACP*, 831 F.3d at 222-23.

<sup>74</sup> *See Village of Arlington Heights*, 429 U.S. at 266-68.

[a minority of whom is Black] of its opportunity to duly elect representatives to fill these seats and gives undue influence to state representatives.”<sup>75</sup> As a result of these substantive and procedural departures, community members were not given an adequate platform to voice their objections and two School Board members were appointed over the vigorous objection of Black community members. *Fifth*, as with the school closing, Black students and their families disproportionately bear the consequences from the 2017 legislation.

For all of these reasons, we have serious concerns that the 2017 legislation, changing the number of School Board members and the electoral method for Sumter County, and failing to create a new opportunity majority-Black district where possible to do so—which in turn made possible the targeted closures of predominately Black schools—also violates the federal Constitution.

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As we continue to investigate these potential violations of federal law, we welcome the opportunity to meet with you to discuss your decision-making processes. However, in the interim, we look forward to receiving answers to our requests for information in response to this letter and our Freedom of Information Act request. Please do not hesitate to contact us with any questions.

Sincerely,



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Sherrilyn Ifill, *President & Director Counsel*  
Sam Spital, Director of Litigation  
Leah C. Aden, Senior Counsel  
John S. Cusick, Equal Justice Works Fellow  
NAACP LEGAL DEFENSE  
& EDUCATIONAL FUND, INC.  
(212) 965-7715  
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/s/ Robert J. Butcher  
Robert J. Butcher  
The Camden Law Firm, PA  
P.O. Box 610  
Camden, South Carolina 29020

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<sup>75</sup> Message from the Governor, State of South Carolina, Office of the Governor, to The Honorable Kevin L. Bryant, President of the Senate (May 19, 2017), [https://www.scstatehouse.gov/sess122\\_2017-2018/sj17/20170523.html](https://www.scstatehouse.gov/sess122_2017-2018/sj17/20170523.html).

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Cc (*by email*): Henry McMaster, Governor  
**State of South Carolina**

Greg Thompson  
William Byrd  
Ben Griffith  
Bobby Anderson  
Rev. Daryl McGhaney  
Johnny Hilton  
Lucille McQuilla  
**Members of the School Board's Finance Committee**

Molly Spearman, State Superintendent  
**South Carolina Department of Education**

James T. McCain, Jr., Chairman  
**Sumter County Council**

Gary Mixon, Sumter County Administrator  
**Sumter County Administration Office**

Brenda C. Williams, MD, Founder and Chief Executive Officer  
Joseph C. Williams, MD, FACP, CMD, Treasurer  
**Family Unit, Inc.**

Susan Dunn, Legal Director  
**American Civil Liberties of South Carolina**

Elizabeth Kilgore, President  
**Sumter County NAACP**

# **Exhibit A**

New York Office  
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**April 30, 2018**

*By email & USPS Mail*

Dr. Debbie Hamm, Interim Superintendent  
The Sumter School District  
1345 Wilson Hall Road  
Sumter, South Carolina 29150

**RE: Freedom of Information Act Request**

Dear Dr. Hamm:

The Foster Care Abuse Law Firm, PA and the NAACP Legal Defense & Educational Fund, Inc., on our own behalf and on behalf of the Family Unit, Inc., write to submit this Freedom of Information Act request.

The Freedom of Information Act, S.C. Code Ann. § 30-4-20 et seq., as amended, gives private individuals the right to copy and inspect public records of public bodies. Specifically, S.C. Code Ann. § 30-4-20(a) defines a public body as “any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority.” The Sumter School District and Sumter County Board of Trustees (School Board) falls within this definition.

{LA0186.DOCX}

Section 30-4-20(c) of the Act defines a public record as “all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body.” We are requesting records which fall within this definition of public record.

The exceptions to the broad disclosure provisions of the Freedom of Information Act concerning disclosure of records which constitute trade secrets, information of a personal nature, records of law enforcement agencies, and the other exceptions set forth in the Act are inapplicable to this request. If you believe that any of the public records subject to this request are exempt from production under the Act, please identify all such documents in order that we may evaluate the claimed exemptions.

Please note that under the Act, any fees associated with providing the requested information may be waived in the interest of benefiting the public. *See* S.C. Code Ann. § 30-4-30(B). LDF is a non-profit civil rights organization, working in the public interest and not for any private commercial interest. The Family Unit is a non-profit, charitable organization, also working in the public interest and not for any private commercial interest. The primary purpose of our request is to obtain information to further the public’s understanding of important School Board policies and decisions, particularly related to the closure of schools serving predominately Black students in Sumter County.

Alternatively, under the Act, a person requesting the public records may copy them. *See* S.C. Code Ann § 30-4-30(C). We are prepared to pay for the costs of copying the materials up to \$1,000 or we will send a representative to copy the records using our own equipment at a location that you have designated.

Pursuant to S.C. Code Ann. § 30-4-30(C) of the Act, please either grant or deny this request for the inspection and copying of all the requested public records within ten (10) business days after the receipt of this request. Similarly, for the requested records more than twenty-four (24) months old after the receipt of this request, please respond within twenty (20) business days. The requests are as follows:

1. School Board meetings minutes from December 20, 2016 that include a transcript of the minutes during the executive session. During this meeting, School Board members failed to announce a specific purpose to justify an executive session.
2. Templeton’s demographics study and all findings that were submitted to the School District on March 31, 2018.
3. All drafts, memos, and correspondence related to Templeton’s demographic study and findings.
4. All documents that Scott Allan relied on in making his recommendation to the School Board on April 2, 2017 and to the Finance Committee on April 21, 2017 regarding which schools to close in 2017 and 2018.

5. All documents the Finance Committee relied on in making its recommendation to support Mr. Allan's proposal to close two schools. The Committee made this recommendation on April 21, 2017.
6. All documents the School District relied on to make the conclusion that rezoning options would not be a feasible solution. On March 20, 2018, Dr. Hamm indicated that "we just can't find ways to make rezoning work."<sup>1</sup>
7. All documents, data, and other information that the School Board researched, reviewed, and analyzed regarding whether zoning saves money and how it may increase bus transportation costs.
8. All documents, data, and other information that the School Board researched, reviewed, and analyzed showing that it costs less to educate a child in a rural school, like F.J. DeLaine Elementary and Mayewood Middle Schools, as compared to more urban schools located in Sumter County.
9. All documents, data, and other information that the School Board used to determine that it costs more to educate a child in a rural school as compared to an urban school in Sumter County.
10. All documents, data, and other information that the School Board researched, reviewed, and analyzed showing that students who attend F.J. DeLaine Elementary and Mayewood Middle schools will not endure longer commute times from their homes to the new schools that they will be assigned to beginning in fall 2018 under the School Board's recent closures and consolidation proposal.
11. All documents, data, and other information showing how much will it cost to effectuate the transfer of students from F.J. DeLaine Elementary School to Cherryvale Elementary School beginning in the 2018 school year.
12. All documents, data, and other information showing how much will it cost to effectuate the transfer of students from Mayewood Middle School to R.E. Davis Elementary School beginning in the 2018 school year.
13. All documents describing the Finance Committee's mission, duties, responsibilities, and membership since it was established.
14. All Development Assistance Committee meeting minutes and attachments to those minutes since it was established.

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<sup>1</sup> Bruce Mills, *Hamm: Rezoning Sumter Schools Won't Solve Low-Enrollment, Other Issues*, The Item (Mar. 22, 2018), <http://www.theitem.com/stories/hamm-rezoning-isnt-solution-to-problem,305493>.

15. All documents describing the Development Assistance Committee's mission, duties, responsibilities, and membership since it was established.
16. All Facilities Committee meeting minutes and attachments to those minutes since it was established.
17. All documents describing the Facilities Committee's mission, duties, responsibilities, and membership since it was established.
18. All documents related to the School District's plan to build a new technical high school.

If this request is denied in whole or in part, please identify the appropriate specific authority and justify all specific deletions by reference to exemptions in the statute. This request also includes documents that you believe to be privileged or that you believe do not fall under the Act. Please list the title of the document, a description of the document with enough detail to inform us as to the type of privilege, and the date of the document. Moreover, please inform us of the reason(s) for any denial in writing, and provide the name, mailing address, and e-mail address of the person or body to whom an appeal should be directed.

If you have any questions regarding this request, please do not hesitate to contact us.

Sincerely,



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Sherrilyn Ifill, *President & Director Counsel*  
Sam Spital, Director of Litigation  
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