LDF Legal Defense Fund

Advancing racial justice since 1940

December 5, 2022

Sent via email

DeSoto Parish Police Jury
101 Franklin Street
Mansfield, LA 71052

Re: DeSoto Parish Policy Jury Redistricting

Dear Members of the DeSoto Parish Police Jury,

The NAACP Legal Defense and Educational Fund, Inc. ("LDF") writes to correct certain misleading information contained in a letter to the DeSoto Parish Police Jury, dated November 18, 2022, from attorneys at the John D. and Eric G. Johnson Law Firm, LLC and Holzman Vogel Baran Torchinsky & Josefiak, PLLC (the "November 18 Letter"). The November 18 Letter accuses the Police Jury of intentionally discriminating against DeSoto Parish's white population and threatens litigation based on inaccurate and misleading assertions concerning the Police Jury redistricting plan adopted in April 2022 ("Plan C"). While we do not object to efforts to reduce the population deviations that appear in Plan C, we believe that this can be accomplished with minimal additional changes to district lines. Moreover, we believe the arbitrary elimination of existing majority-Black Police Jury districts, as the November 18 Letter advocates, would itself constitute intentional racial discrimination and may also amount to vote dilution in violation of Section 2 of the Voting Rights Act of 1965.

I. Complying with "One Person, One Vote."

The Equal Protection Clause of the Fourteenth Amendment requires "equal representation for equal numbers of people" in the apportionment of state and local legislative districts, such as the districts from which members of the DeSoto Parish Police Jury are elected.[1] This "One Person, One Vote" principle provides that maps that weaken the voting power and representation of residents of one legislative district compared to other residents of another district in the same body are

[1] *See Reynolds v. Sims*, 377 U.S. 533, 559-60 (1964) (citing *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964)).

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unconstitutional.[2] The Supreme Court has held that population deviations within plus or minus 5% of the mathematical mean—that is, a total deviation of no more than 10%—are presumptively constitutional.[3] Redistricting plans that exceed this standard are not automatically invalid if the jurisdiction can show that an adopted plan legitimately advances a rational governmental policy formulated "free from any taint of arbitrariness or discrimination."[4]

Adherence to traditional redistricting principles, the set of general criteria that guide redistricting, may be sufficient to justify greater deviations.[5] These principles serve important democratic purposes. For example, ensuring contiguity and compactness in district maps helps to unify communities and support effective representation. It also importantly limits the ability of map drawers to improperly manipulate lines, helping to prevent the practice of gerrymandering.

Contrary to the November 18 Letter and the attached complaint, it appears that Plan C was drawn according to traditional redistricting principles and goals, and not predominantly on the basis of race or with the intent to discriminate against white voters. Rather, it appears that it was drawn primarily to preserve, to the extent practicable, the existing district boundaries while substantially correcting for changes in the population. Maintaining districts as previously drawn, where deviation from those historical boundaries is not required by the Voting Rights Act or other principles, can serve voters by maintaining continuity of representation. This principle aims to ensure that redistricting does not introduce radical changes to maps and to voters' elected representatives unnecessarily.

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[2] *See Reynolds*, 377 U.S. at 567–68.

[3] *See Reynolds*, 377 U.S. at 568 ("The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races."); *see also Gaffney v. Cummings*, 412 U.S. 735, 744–45 (1973) (explaining that "minor deviations from mathematical equality among state legislative districts" are not constitutionally suspect, but "larger variations from substantial equality are too great to be justified by any state interest"); *Brown v. Thomson*, 462 U.S. 835, 842 (1983) (holding that apportionment plans with a maximum population deviation among districts of less than 10% are generally permissible, whereas disparities in excess of 10% most likely violate the "one person, one vote" principle).

[4] *Roman v. Sincock*, 377 U.S. 695, 710 (1964); *see Brown*, 462 U.S. at 847–48 (stating that "substantial deference" should be given to a state's political decisions, provided that "there is no 'taint of arbitrariness or discrimination'"); *see also Brown*, 462 U.S. at 852 (Brennan, J., dissenting) ("Acceptable reasons . . . must be 'free from any taint of arbitrariness or discrimination . . . .'").

[5] *E.g.*, *Brown*, 462 U.S. at 847-48 (principle of preserving county boundaries could justify deviation as high as 13%); *see generally Shaw v. Reno*, 509 U.S. 630, 647, 651 (1993).

Other traditional redistricting principles may also justify the larger than normal deviations found in Plan C. For example, the U.S. Supreme Court has recognized the importance of keeping communities of interest whole in the map-drawing process.[6] Communities of interest can be defined as a neighborhood or group of people with common policy concerns that would benefit from being maintained in a single district. While race cannot be the sole factor, race is one factor that can help define a community of interest in tandem with other considerations such as population deviations, contiguity, and maintaining the cores of prior districts. Indeed, it is critical that no one factor outweighs all others.

Even if the Police Jury is inclined to redraw the redistricting plan to reduce the population deviation to within the presumptively valid 10% threshold, there is no reason for the radical departure from historic district lines advocated by the November 18 Letter or for disregarding other traditional redistricting principles without any justification other than changing the racial composition of the districts. By way of example, attached to this letter is an alternative plan that reduces the overall deviation to approximately 4.7% while making minimal additional changes to Plan C.

II. The November 18 Letter Is Misleading.

The authors of the November 18 Letter make a number of misleading assertions to support the flawed argument that Plan C constitutes a racial gerrymander and is the product of racial discrimination.

Racial gerrymandering occurs where race is the predominant reason for drawing district lines in a particular manner.[7] Where reasons other than race predominantly drove the line drawing, there has been no racial gerrymandering, even if race was a secondary consideration. The complainants assert that Plan C is a racial gerrymander because the districts have purportedly bizarre shapes and boundaries. They ignore that Plan C's districts largely follow the same lines as in the prior plans, with some departure from the old lines to reduce the deviation. Thus, any awkwardness in the district lines can better be explained by adherence to the traditional principle of preserving the prior district lines than by the race of individual voters.

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[6] *Karcher v. Daggett*, 462 U.S. 725 (1983).

[7] *See Miller v. Johnson*, 515 U.S. 900, 909 (1995).

Likewise, the November 18 letter asserts that the fact that the predominantly white Police Jury districts have greater than average population while the predominantly Black districts have lower than average population is evidence that this honorable body intentionally discriminated against DeSoto Parish's white voters. That contention is flawed for the same reason that the complainants' racial gerrymandering argument fails: The deviations are better explained by the map drawer's attempt to preserve the existing district lines while taking into account where the population growth had occurred. Moreover, as the alternative plan attached hereto shows, these deviations can be rendered de minimis with minor adjustments to Plan C.

The November 18 Letter suggests that the Police Jury should have endeavored to eliminate one or more existing majority-Black districts ostensibly in the name of avoiding racial gerrymandering and discrimination—regardless of the impact on existing district lines, the relationships between voters and their elected representatives, or the demands of traditional redistricting principles. Doing as the complainants ask, however, could place the Policy Jury in significant legal jeopardy. Indeed, it is difficult to imagine a starker example of intentional discrimination than purposely eliminating an existing majority-minority district for no other reason than to achieve a desired racial composition for the overall plan. Yet that is exactly what the complainants would have this body do.

III. The DeSoto Parish Police Jury Must Comply with Section 2 of the Voting Rights Act.

The November 18 Letter also suggest that the Police Jury lacked sufficient evidence that the Voting Rights Act required race-based line drawing. Putting aside that, as explained above, Plan C was not drawn predominantly on the basis of race, there is substantial evidence that a DeSoto Parish Police Jury map that dilutes the voting strength of Black community members and/or eliminates majority-Black districts that have historically existed could run afoul of federal law. Removal of these districts would likely violate Section 2.

To ensure that racial minority voters have an equal opportunity to elect their preferred candidates, Section 2 prohibits states and localities from drawing electoral lines with the intent or effect of diluting the voting strength of voters of color. That is, the Voting Rights Act requires that voters of color be provided equal opportunities to elect representatives of their choice not only for state-level representative bodies,

but also for local elected bodies including parish governing boards, school boards, and city councils.

Section 2 prohibits minority vote dilution and requires you to ensure that racial minority voters have an equal opportunity "to participate in the political process and elect candidates of their choice," in light of the Parish's demographics, voting patterns, history, and other factors under the "totality of circumstances."[8]

Redistricting maps may dilute the voting strength of people of color if: (1) a district can be drawn in which the minority community is sufficiently large and geographically compact to constitute a majority; (2) the minority group is politically cohesive; and (3) in the absence of a majority-minority district, candidates preferred by the minority group would usually be defeated due to the political cohesion of non-minority voters for their preferred candidates.[9] After establishing these three preconditions, a "totality of circumstances" analysis determines whether minority voters "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."[10]

Recent election results demonstrate stark patterns of voting along racial lines in the State of Louisiana,[11] and DeSoto Parish specifically. In a study of 11 recent elections encompassing DeSoto Parish, LDF found strong patterns of racial polarized voting wherein Black voters in the parish supported a common preferred candidates

[8] *See Thornburg v. Gingles*, 478 U.S. 30, 34 (1986).

[9] *Id.*

[10] 52 U.S.C. § 10301(b); *Colleton Cty. Council v. McConnell*, 201 F. Supp. 2d 618, 632 (D.S.C. 2002) (quoting *Gingles,* 478 U.S. at 47) ("[Section] 2 prohibits the implementation of an electoral law that 'interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.'"); *see also LULAC v. Perry*, 548 U.S. 399, 425 (2006) (describing the operation of the "totality of the circumstances" standard in the vote-dilution claims).

[11] A district court recently found that there was sufficient preliminary evidence of racially polarized voting statewide to support plaintiffs' challenge to Louisiana's Supreme Court district map. *Louisiana State Conference of NAACP v. Louisiana*, 490 F. Supp. 3d 982, 1019 (M.D. La. 2020). In *St. Bernard Citizens For Better Government*, the district court found racially polarized voting patterns in statewide gubernatorial elections, as well as local parish elections. *St. Bernard Citizens For Better Gov't*, 2002 WL 2022589, at *7 (E.D. La. Aug. 26, 2002). See, e.g., *Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 436-37 (M.D. La. 2017), rev'd sub nom. *Fusilier v. Landry*, 963 F.3d 447 (5th Cir. 2020) (The district court found that there were racially polarized voting patterns in the parish's judicial elections, and although the Fifth Circuit reversed the district court's decision, it held that the district court did not err in its finding of racially polarized voting); *Citizens for a Better Gretna v. City of Gretna*, 636 F. Supp. 1113, 1124 (E.D. La. 1986); *Major v. Treen*, 574 F. Supp. 325, 337 (E.D. La. 1983) (The court held that there was racial polarization in Orleans Parish).

by substantial margins, ranging from approximately 60 to over 90 percent, while white voters preferred different candidates by similar margins. At a parish-wide level, the candidates preferred by Black voters were generally outvoted compared to preferred by white voters. Such patterns form the heart of a potential minority vote dilution claim.[12] The Parish Police Jury must therefore be well attuned to your obligations under Section 2 of the Voting Rights Act and must not arbitrarily eliminate districts that have historically provided Black voters in the parish an opportunity to elect candidates of their choice. Should you consider a new map, Section 2 compels you to preserve effective majority-minority opportunity districts that remain necessary and effective for Black voters to elect candidates of their choice.

* * *

In conclusion, we hope to be a resource in your efforts to ensure the map ultimately enacted for the DeSoto Parish Police Jury complies with the U.S. Constitution and both federal and state statutes. We provide this guidance to help you mitigate the risk of costly and unnecessary litigation. States and localities that fail to adhere to federal law in the redistricting process risk exposure to extremely burdensome legal fees—including both defense costs and the costs of prevailing plaintiffs—and for this reason it is critical that you take steps to ensure that your plan complies with federal law.[13] We would encourage caution against adopting the

[12] *Gingles*, 478 U.S. at 48 n.15; *see also Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994) (explaining that racially polarized voting increases the potential for discrimination in redistricting, because "manipulation of district lines can dilute the voting strength of politically cohesive minority group members"); *N. Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204, 221 (4th Cir. 2016) (noting that racially polarized voting is "[o]ne of the critical background facts of which a court must take notice" in Section 2 cases); *Collins v. City of Norfolk, Va.*, 816 F.2d 932, 936-38 (4th Cir. 1987) (emphasizing that racially polarized voting is a "cardinal factor[]" that "weigh[s] very heavily" in determining whether redistricting plans violate Section 2 by denying Black voters equal access to the political process).

[13] Last year, a small school district in New York State paid more than $11 million dollars in attorneys' fees after losing a Section 2 lawsuit brought by a local NAACP branch. See Jennifer Korn, *ERCSD Threatens to Fire Teachers if Legal Fees Not Cut to $1: NAACP Leaders Respond*, ROCKLAND COUNTY TIMES, Jan. 21, 2020, https://bit.ly/39dKvij; Report and Recommendation, NAACP, *Spring Valley Branch v. East Ramapo Central School Dist.*, No. 7:17- 08943-CS-JCM, 2020 WL 7706783 at *12 (S.D.N.Y. Dec. 29, 2020) (finding that the school district should pay over $4 million in plaintiffs' attorneys' fees and costs).

Lawmakers in Charleston County, South Carolina, following the 2000 redistricting cycle, spent $2 million unsuccessfully defending against a Section 2 claim and an additional $712,027 in plaintiffs' attorneys' fees and costs. Order Granting Attorneys' Fees, *Moultrie v. Charleston Cty.*, No. 2:01-cv-00562-PMD (D.S.C. Aug. 8, 2005); Congressional Authority to Protect Voting Rights After Shelby

flawed reading of federal statutory and constitutional requirements contained in the November 18 Letter, and urge you to disregard the complainants' calls to engage in discriminatory map-making.

Our organization has authored a guidebook, *Power on the Line(s): Making Redistricting Work for Us*, which further expands upon the principles defined above that can be accessed online at bit.ly/LDFRedistrictingGuide. Please also feel free to contact Stuart Naifeh, snaifeh@naacpldf.org, with any questions or to discuss these issues in more detail.

We appreciate your consideration and time and wish you best of luck in enacting a fair and equitable map.

Sincerely,

/s/ Stuart Naifeh
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County v. Holder: Hearing Before the Subcomm. on the Constitution, Civil Rights and Civil Liberties of the H. Comm. on Judiciary, 116th Cong. 14 (Sept. 24, 2019) (Written Testimony of Professor Justin Levitt) (citing Amended Judgment, Moultrie v. Charleston Cty., No. 2:01-0562 (D.S.C. Aug. 9, 2005)).

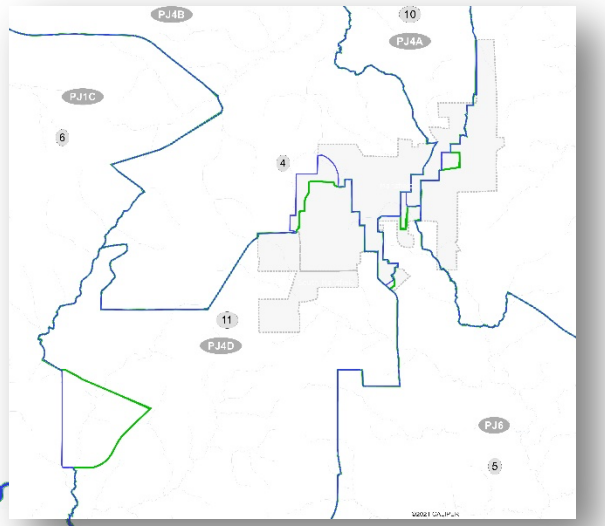
A challenge to Virginia's state legislative redistricting cost taxpayers more than $4 million dollars. Dave Ress, *Big bills for Virginia's redistricting battle*, Daily Press, (July 13, 2018), http://www.dailypress.com/news/politics/dp-nws-shad-plank-0714- story.html.

NAACP Legal Defense and Educational Fund, Inc. ("LDF")

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in political participation, education, economic justice, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People ("NAACP") since 1957, though LDF was originally founded by the NAACP and

Appendix I

DeSoto, LA Police Jury
Plan C Adopted, Alt Rev 1
Overlay
Source: 2020 Census
Data : December 4, 2022



Mansfield Area

Appendix II

DeSoto LA Police Jury Districts

Alternative Rev 1 Plan

Population Summary

	Population									Voting Age Population							
District	Population	Deviation	% Deviation	Hispanic Origin	% Hispanic Origin	NH_Wht	% NH_Wht	NH_Blk	% NH_Blk	18+ Pop	% 18+ Pop	H18+ Pop	% H18+ Pop	NH18+ Wht	% NH18+ Wht	NH18+ Blk	% NH18+ Blk
PJ1A	2486	49	2.01%	85	3%	1984	79.8%	307	12.3%	1757	70.7%	47	2.7%	1434	81.6%	219	12.5%
PJ1B	2478	41	1.68%	73	3%	1670	67.4%	586	23.6%	1935	78.1%	43	2.2%	1349	69.7%	450	23.3%
PJ1C	2469	32	1.31%	63	3%	1907	77.2%	422	17.1%	1966	79.6%	41	2.1%	1550	78.8%	330	16.8%
PJ2	2449	12	0.49%	74	3%	2006	81.9%	241	9.8%	1762	71.9%	46	2.6%	1456	82.6%	169	9.6%
PJ3	2443	6	0.25%	80	3%	1983	81.2%	197	8.1%	1828	74.8%	56	3.1%	1500	82.1%	153	8.4%
PJ4A	2445	8	0.33%	54	2%	938	38.4%	1336	54.6%	1858	76.0%	38	2.0%	730	39.3%	1024	55.1%
PJ4B	2371	-66	-2.71%	82	3%	688	29.0%	1473	62.1%	1874	79.0%	60	3.2%	597	31.9%	1132	60.4%
PJ4C	2450	13	0.53%	49	2%	729	29.8%	1567	64.0%	1915	78.2%	31	1.6%	626	32.7%	1188	62.0%
PJ4D	2427	-10	-0.41%	92	4%	668	27.5%	1576	64.9%	1861	76.7%	65	3.5%	565	30.4%	1171	62.9%
PJ5	2411	-26	-1.07%	71	3%	1701	70.6%	472	19.6%	1849	76.7%	44	2.4%	1312	71.0%	365	19.7%
PJ6	2383	-54	-2.22%	39	2%	848	35.6%	1409	59.1%	1835	77.0%	24	1.3%	683	37.2%	1060	57.8%
Total	26,812			762		15,122		9,586		20,440		495		11,802		7,261	
Ideal	2,437																
Overall Plan Deviation	4.72%																