



February 7, 2019

By Email and USPS mail

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Dear Chairman Long:

The NAACP Legal Defense and Educational Fund, Inc. (LDF), the Decatur-Morgan County Branch of the NAACP, the Alabama State Conference of the NAACP, Decatur City Councilman Billy Jackson, Dr. Samuel King, and Attorney Jim Blacksher write to express our concerns about the at-large method of electing the members of the Morgan County Commission (the “Commission”).¹

As you know, all five members of the Commission are elected at-large by voters countywide. But, four of the Commissioners must run from specific numbered places, which are based on four geographic residency districts. The Commission’s districts have remained the same since 1959. For reasons explained below, we believe that this at-large system, including the numbered place requirements and the malapportioned residency districts, may violate the Voting Rights Act (“VRA”) because the system prevents Black and Latinx voters from electing their preferred candidates to the Commission and from effectively participating in the electoral process.²

The VRA prohibits voting standards, practices, or procedures that either are enacted with racially discriminatory intent or have racially discriminatory results.³ A chief purpose of the VRA

¹ Since its founding in 1940, LDF has been a pioneer in the struggle to secure and protect the voting rights of Black people and other people of color. Since 1957, LDF has been a separate entity from the NAACP and its local branches. LDF, the NAACP, and Mr. Blacksher have won numerous cases challenging discriminatory election schemes and methods in Alabama and elsewhere. *See, e.g., Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395 (M.D. La. 2017) (LDF and the local NAACP successfully challenging the at-large election of state court judges in a parish); *Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026 (M.D. Ala. 2017) (Mr. Blacksher successfully challenging the packing of majority-minority state legislative districts); *Ga. State Conf. of the NAACP v. Fayette Cty. Bd. of Comm’rs*, 118 F. Supp. 3d 1338 (N.D. Ga. 2015) (LDF and the local NAACP successfully challenging a county commission and school board’s at-large elections); *Medders v. Autauga Cty. Bd. of Educ.*, 858 F. Supp. 1118 (M.D. Ala. 1994) (Mr. Blacksher successfully challenging a school board’s malapportionment and multi-member districts).

² “Two minority groups (in this case blacks and hispanics) may be a single [VRA] minority if they can establish that they behave in a politically cohesive manner.” *Concerned Citizens of Hardee Cty. v. Hardee Cty. Bd. of Comm’rs.*, 906 F.2d 524, 526 (11th Cir. 1990).

³ *Chisom v. Roemer*, 501 U.S. 380, 394 & n.21 (1991).

is to prohibit minority vote dilution, including the use of at-large elections that submerge voters of color into districts in which they are an ineffective minority of voters with minimal influence.⁴

Here, it appears that the Commission’s at-large election system, in connection with racially polarized voting and other practices, is allowing the white voting majority in the County to cancel out the votes of, and defeat the candidates preferred by, voters of color. Under the U.S. Supreme Court’s decision in *Thornburg v. Gingles*, the courts must first look to the three “*Gingles* preconditions” to identify a VRA violation: (1) whether the County’s minority community is sufficiently large and geographically compact to form a majority in a single-member district; (2) whether minority voters are politically cohesive; and (3) whether bloc voting by white voters usually prevents minorities from electing their preferred candidates to the Commission.⁵ “[I]t will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances.”⁶

The circumstances in Morgan County satisfy all three *Gingles* preconditions.

First, while Black and Latinx people together are 18% of Morgan County’s voting age population,⁷ the Commission has never had a minority member, nor have any minority candidates won any at-large elections in the County. If the five Commissioners were each elected from an alternative election system of five single-member districts, the Commission could include a district in which Black and Latinx voters are the majority of its voting age population. We believe that the creation of such a majority-minority district would satisfy the VRA concerns raised in this letter.

The existence of racially polarized voting in the County satisfies the other two *Gingles* preconditions.⁸ Even as Black and Latino voters have voted together in support of Black candidates (showing cohesion), Black candidates for the Commission or other countywide offices have repeatedly lost elections against white candidates (indicating that voting is racially polarized).⁹

⁴ *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

⁵ *Gingles*, 478 U.S. at 50-51.

⁶ *Ga. State Conf. of NAACP v. Fayette Cty. Bd. of Comm’rs*, 775 F.3d 1336, 1342 (11th Cir. 2015).

⁷ *2010 Census, Voting Age Population by Race*, U.S. Census Bureau.

⁸ Racially polarized voting occurs when different racial groups vote for different candidates. In a racially polarized election, minorities vote together for their preferred (usually a minority) candidate, and most white voters vote for the opposing (usually a white) candidate. Racially polarized voting is pervasive in Alabama. *See, e.g., Ala. Legis. Black Caucus v. Alabama*, 135 S. Ct. 1257, 1273 (2015); *United States v. McGregor*, 824 F. Supp. 2d 1339, 1346 & n.3 (M.D. Ala. 2011).

⁹ For example, in 2018, Dr. Samuel King, a Black person and minority voters’ preferred candidate, lost in a racially polarized general election for Commission District 1. Morgan County Unofficial Midterm General Election Results, Nov. 6, 2018, <http://www.morgancountyprobate.com/temp/e145.htm>. In 2014 and 2018, Mr. Randy Turner, a Black man and minority voters’ preferred candidate, lost in racially polarized primary elections for the Commission. Primary Election Results, June 3, 2014, <http://www.morgancountyprobate.com/media/6556/2014-primary-summary-report.htm>; Primary Election Results June 5, 2018, <http://www.morgancountyprobate.com/media/29051/e145.htm>. In 2014, Ms. Sonya Patterson, a Black person and the minority preferred candidate for license commissioner, lost her election. General Election Results, Nov. 4, 2014, <http://www.morgancountyprobate.com/media/6568/2014-general->

Where, as here, the *Gingles* preconditions are satisfied, a court would then examine the nine “Senate Factors” to decide whether the “totality of the circumstances” also prove that the at-large election system is racially discriminatory.¹⁰ Here, the Senate Factors support the conclusion that Morgan County’s at-large election system violates the VRA. The County’s history of discrimination in voting¹¹ and, as discussed above, the existence of racially polarized voting and lack of minority elected officials in the County satisfy the first, second, and seventh Senate Factors.

Regarding the third Senate Factor, the Commission’s malapportioned residency districts enhance the racially discriminatory nature of the at-large election system.¹² Under the current residency districts, 59.3% of the County’s total population is in District 1 (70,953 people). District 2 has 22.1% (26,425 people) of the County’s population. District 4 represents 10.1% (12,114 people) of the County’s total population. The smallest district is District 3 with a total population of 10,001 people, or 8.4% of the County’s population. Nearly 90 percent of the Black and Latinx people in the County are confined to the malapportioned District 1.¹³ In a properly apportioned single-member district system, however, voters would be equally divided between five districts with minority voters constituting the majority of the voting-age population in one of these districts.

The history of discrimination in education, housing, the criminal justice system, and other areas in Morgan County satisfies the fifth Senate Factors.¹⁴ For example, since the 1960s, both the

election-summary-report.htm. In 2006, Mr. Murphy Brown, a Black person and minority voters’ preferred candidate, also lost in a racially polarized general election for a seat on the Commission. General Election Results, Nov. 7, 2006, <http://www.morgancountyprobate.com/media/3506/2006-General-Election-Precinct-Report.HTM>.

¹⁰ *Gingles*, 478 U.S. at 36-37. The Senate Factors are: (1) the extent of any history of discrimination related to voting; (2) the extent to which voting is racially polarized; (3) the extent to which Morgan County uses voting practices that may enhance the opportunity for discrimination; (4) whether minority candidates have access to candidate slating processes; (5) the extent to which minority voters bear the effects of socioeconomic discrimination; (6) whether political campaigns have been characterized by overt or subtle racial appeals; (7) the extent to which people of color have been elected to public office; (8) whether elected officials are responsive to minority residents; and (9) whether the policy underlying the at-large election system is tenuous. *Id.* at 36-37. However, “there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.” *Id.* at 45.

¹¹ *See, e.g.*, U.S. Dep’t of Justice, Civil Rights Division, Voting Determination Letters for Alabama, <http://www.justice.gov/crt/voting-determination-letters-alabama> (listing a VRA objection against Morgan County).

¹² *See McMillan v. Escambia Cty.*, 748 F. 2d 1037, 1045 (Former 5th Cir. 1984) (explaining that, because a commissioner elected at-large from a residency district is expected to still represents her district, the policy behind at-large systems with residency districts is tenuous); *United States v. Marengo Cty.*, 731 F.2d 1546, 1570-71 (11th Cir. 1984) (holding that, while an at-large election system with residency districts offers “geographic diversity,” it “does not operate to reduce racial dilution, because the white majority still elects whites to represent all the residency districts”); *Perkins v. City of West Helena*, 675 F.2d 201, 215 n.16 (8th Cir.), *aff’d mem.*, 459 US 801 (1982) (holding that the “one man, one vote” principle “still has implications for at-large systems” because the “residents of the larger wards have less proportional representation than voters in the less populated wards”).

¹³ Eric Fleischauer, *Morgan, Decatur Officials Clash over Unequal County Districts*, DECATUR DAILY, Apr. 8, 2018, <https://bit.ly/2Tjx6eN>.

¹⁴ *See, e.g.*, Consent Order, *United States v. Crim*, No. 5:08-cv-00172-UWC (N.D. Ala. Dec. 16, 2008), ECF No. 12, <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/crimsettle.pdf>; Consent Decree, *United*

Decatur and Morgan County Boards of Education have been subject to school desegregation orders.¹⁵ Black and Latinx residents of Morgan County bear the present day effects of this discrimination, which hinders their ability to participate effectively in the political process. For example, the U.S. Census’s 2013-2017 American Community Survey for Morgan County shows that 21.4% of Black and 62.5% of Latinx residents, but only 14.2% of whites did not finish high school. Over a third of Black (35.8%) and Latinx (40.7%) family households lived below the poverty line versus just 8.7% of white families. The white median family income is \$63,435 as compared to \$34,525 for Black and \$31,160 for Latinx families. And, among the working age population (ages 16 to 64), 11.5% of Black and only 6.1% of white residents are unemployed.¹⁶

Under the eighth and ninth Senate Factors, the Commission has been unresponsive to the concerns of the minority community and the Commission has relied on tenuous justifications for maintaining the at-large system. For instance, while 21% of Black and 55% of Latino residents of the County lack healthcare insurance, the Commission sought to stop providing any money to the Decatur-Morgan County Community Free Clinic.¹⁷ Furthermore, last year, the County’s state legislative delegation introduced and unanimously supported Alabama House Bill 437 (“HB437”). HB437 would have allowed the community to vote to change the Commission’s method of election to single-member districts. But, despite legislators’ and Decatur City Councilors’ support for it, HB437 failed to pass the State Legislature because of the Commission’s unanimous opposition.¹⁸

In addition, in 1986, Black voters sued the Commission under the VRA as a part of the landmark *Dillard v. Crenshaw County* litigation. In *Dillard*, a federal court found that the Alabama Legislature had purposefully changed the state laws governing at-large election systems for most county, school board, city, and other local governments in Alabama to require the use of numbered places to prevent Black voters from electing candidates of their choice.¹⁹ The court also found that, since Reconstruction, Alabama had engaged in a pattern of switching between methods of election as needed to diminish minority voting strength. The Commission’s history includes both the use of discriminatory numbered places and suspicious switches between different methods of election.

States v. Freeway Club (N.D. Ala. May 13, 2002), available at <https://www.justice.gov/crt/housing-and-civil-enforcement-cases-documents-421>; *Maynor v. Morgan County*, 147 F. Supp. 2d 1185, 1186 (N.D. Ala. 2001) (comparing county jail cells to “the holding units of slave ships during the Middle Passage of the eighteenth century”).

¹⁵ *Lee v. Macon Cty. Bd. of Educ.*, 267 F. Supp. 458 (M.D. Ala. 1967) (three-judge court).

¹⁶ 2013-2017 Am. Community Survey 5-Year Estimates, U.S. Census Bureau, <http://factfinder.census.gov>.

¹⁷ Eric Fleischauer, *Morgan, Decatur officials clash over unequal county districts*, Decatur Daily, Apr. 8, 2018, https://www.decaturdaily.com/news/morgan_county/morgan-decatur-officials-clash-over-unequal-county-districts/article_36d03f58-fd7c-5faa-888c-0ebb09b7f2f3.html.

¹⁸ *Id.*

¹⁹ See generally *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1356-60 (M.D. Ala.), 649 F. Supp. 289, 294 (M.D. Ala. 1986), *aff’d* 831 F.2d 246, 250 (11th Cir. 1987).

Because of the *Dillard* litigation, over 180 county commissions, school boards, and cities in Alabama changed their methods of election by court orders.²⁰ Although the Commission was a defendant in *Dillard*, it denied liability in the case, and so no remedy to its potentially discriminatory at-large system was ever adopted.²¹ The Commission has maintained this system even as Decatur and most other county commissions have switched to single-member districts.²²

In circumstances like those present in Morgan County, federal courts have repeatedly found that the use of at-large voting systems act to dilute minority voting power in violation of the VRA.²³

The Commission continues to make critical decisions that directly impact the local Black and Latinx communities, including, but not limited to the construction of roads, bridges, and infrastructure; and the appropriation of funds for agriculture, the public welfare, and water.²⁴ It is alarming then that the Commission is making such a broad array of important decisions without any opportunity for Black and Latinx voters to elect their candidates of choice to the Commission.

Thankfully, however, the Commission can act to resolve this inequality by passing a resolution asking the Legislative Delegation to introduce a new bill—similar to HB 437—to change to an election plan with five single-member districts, including one district in which Black and Latinx voters would comprise a majority of that district’s total citizen voting-age population.

We write to assist the Commission in pursuing this more inclusive option, and to help it to avoid the costly and lengthy litigation that may otherwise be needed to ensure the Commission’s compliance with the VRA.²⁵ We urge the Commission to work with us and we would welcome the opportunity to meet with you in-person to amicably and quickly to resolve this important issue.

Please respond to us **in writing by Thursday February 14, 2019** with a proposed meeting date. Please also feel free to contact us by phone or email at any time.

²⁰ See Jerome Gray & James U. Blacksher, *The Dillard Cases and Grassroots Black Political Power*, 46 Cumb. L. Rev. 311, 322 (2016).

²¹ In 2010, the district court dismissed *Dillard*, including the pending claims against the Commission, without prejudice. Corrected Judgment, *Dillard v. Crenshaw Cty.*, No. 2:85-cv-1332 (M.D. Ala. Dec. 16, 2010), ECF No. 740.

²² Jim Blacksher, et. al., *Voting Rights in Alabama: 1982-2006*, 17 S. Cal. Rev. L. & Soc. Just. 249, 264 (2008).

²³ See, e.g., *Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1322 (M.D. Ga. 2018) (finding that the use of at-large elections for a county school board violated the VRA); *United States v. Osceola Cty.*, 475 F. Supp. 2d 1220 (M.D. Fla. 2006) (finding that the at-large election of a county commission violated the VRA).

²⁴ Ala. Code §§ 11-3-11, 23-1-80.

²⁵ See, e.g., Federal Judicial Center, *2003-2004 District Court Case-Weighting Study*, Table 1 (2005) (finding that voting cases consume the sixth most judicial resources); John E. Jones, *Appealing District Vote Wastes \$1M*, THE CITIZEN (Dec. 2, 2014), available at <http://thecitizen.com/articles/12-02-2014/appealing-district-vote-wastes-1m> (noting that Fayette County, Georgia spent \$1 million unsuccessfully fighting a VRA claim). *Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 92 (2005) (“Two to five years is a rough average” for the length of VRA lawsuits).



Sincerely,

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