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June 19, 2021

Sent via email

Re: LDF Testimony to the New York State Independent Redistricting Commission's Long Island Hearing

Dear Chair Imamura, Vice Chair Martins, and members of the New York State Independent Redistricting Commission (the "Commission"):

The NAACP Legal Defense and Educational Fund, Inc. ("LDF") writes to impress upon the Commission its affirmative obligation to ensure compliance with Section 2 of the Voting Rights Act and to urge the Commission to be especially vigilant in combatting racial vote dilution on Long Island.

I. The Commission Has an Affirmative Obligation to Ensure Compliance with Section 2 of the Voting Rights Act and Other Federal Redistricting Requirements

The Commission has an affirmative obligation to ensure that all district maps comply with Section 2 of the Voting Rights Act ("Section 2") as well as other requirements under the U.S. Constitution, including the "one person, one vote" requirement of the Constitution's Equal Protection Clause.[1] Section 2 of the Voting Rights Act requires the Redistricting Commission to ensure that voters of color have an equal opportunity "to participate in the political process and elect candidates of their choice," taking into consideration the state or locality's demographics, voting patterns, and other circumstances. *See Thornburg v. Gingles*, 478 U.S. 30, 34 (1986).

The U.S. Supreme Court has explained that the body charged with responsibility for redistricting may violate Section 2 if it adopts a district map that unnecessarily dilutes the voting power of voters of color. A district map is

[1] The U.S. Supreme Court has held that the population of districts (except for U.S. Congress) must have deviations within plus or minus five percent to be consistent with the one-person, one-vote doctrine under the Equal Protection clause and that district maps for U.S. Congress must have equal population "as nearly as practicable." *See Brown v. Thomson*, 462 U.S. 835, 842 (1983) (holding that apportionment plans with a maximum population deviation under 10% are generally permissible, whereas disparities in excess of 10% most likely violate the "one person, one vote" principle); *Karcher v. Daggett*, 462 U.S. 725 (1983) (holding that congressional districts must be mathematically equal in population, unless a deviation from that standard is necessary to achieve a legitimate state objective).

dilutive in violation of Section 2 when the following preconditions are satisfied: (1) an alternative map can be drawn that includes a district in which the minority community is sufficiently large and geographically compact to constitute a majority in a single-member illustrative district (i.e., a majority-minority district could be created); (2) the minority group is cohesive in its support for its preferred candidates; and (3) in the absence of majority-minority districts, candidates preferred by the minority group would usually be defeated due to the political cohesion of non-minority voters for candidates not preferred by minority voters.[2] *See Gingles*, 478 U.S. at 47-52 (these three preconditions are referred to as the "*Gingles* preconditions"). After a plaintiff establishes the three *Gingles* preconditions, a "totality of circumstances" analysis is required to determine 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." 52 U.S.C. § 10301(b); *see also LULAC v. Perry*, 548 U.S. 399, 425 (2006); *Gingles*, 478 U.S. 30.[3] The Second Circuit has recognized that "it 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." *See N.A.A.C.P. v. City of Niagara Falls*, 65 F.3d 1002, 1020 (2d Cir. 1995).

II. The Commission Must Be Especially Vigilant in Combatting Racial Vote Dilution on Long Island

The Commission must be especially vigilant when drawing maps on Long Island in light of current and historical conditions that enhance the risk of racial vote dilution.

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[2] The second and third conditions are commonly referred to as racial bloc or racially polarized voting.

[3] *Cf. Pope* v. *Cty. of Albany*, 94 F. Supp. 3d 302, 317 n.13 (N.D.N.Y. 2015) ("'Packing' and 'cracking' refer to two ways in which minority votes can be diluted in the context of single-member districts. '[D]ilution of racial minority group voting strength may be caused' either 'by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.' . . . The former constitutes 'cracking' and the latter, 'packing.'").

First, Long Island has a significant minority population that is at risk of being consistently outvoted by the majority white population: Nassau County's population is 155,145 Black, 229,280 Latino, 133,950 Asian and 817,865 white, and Suffolk County's population is 109,645 Black, 286,575 Latino, 59,335 Asian, and 1,007,170 white.[4] Although both counties include significant communities of color, voters of color are still significantly outnumbered by white voters and are at risk of being shut out of the political process unless districts are drawn in which voters of color have an equal opportunity to elect candidates of their choice.[5]

Second, Long Island's voters of color are severely segregated. It has been widely reported that "segregation of [B]lacks and whites has been embedded on Long Island" and Long Island is "one of the most segregated suburbs in America" due to its history of redlining and racial steering.[6] According to one analysis, Nassau and Suffolk Counties together exhibit the 11th highest level of Black/white residential segregation nationwide (out of 318 geographic areas measured).[7] High levels of segregation are known to contribute to racial vote dilution. *See, e.g., N.A.A.C.P. Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 408 (S.D.N.Y. 2020), *aff'd* 984 F.3d 213 (2d Cir. 2021); *United States v. City of Euclid*, 580 F. Supp. 2d 584, 606 (N.D. Ohio 2008).

Third, Long Island has been home to a number of lawsuits alleging racial vote dilution, several of which have resulted in court orders requiring local jurisdictions to alter election structures to address discrimination in elections. These cases have affirmed the existence of racially polarized voting throughout Long Island. For example:

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4 *See* 2019 American Community Survey 5-Year Estimates, United States Census.

5 To prove a violation of Section 2, plaintiffs must prove, among other things, that "a bloc voting majority must usually be able to defeat candidates supported by a politically cohesive, geographically insular minority group," *Thornburg v. Gingles*, 478 U.S. 30, 31 (1986), a factor that is likely present in both Nassau and Suffolk Counties. *See, e.g., Flores v. Town of Islip*, No. 18-CV-3549, 2020 WL 6060982 (E.D.N.Y. Oct. 14, 2020); *Goosby v. Town of Hempstead*, 956 F. Supp. 326 (E.D.N.Y. 1997), *aff'd*, 180 F.3d 476 (2d Cir. 1999).

6 *See, e.g.*, Olivia Winslow, *Dividing Lines, Visible and Invisible*, Newsday (Nov. 17, 2019), https://bit.ly/2Tch5ML.

7 *See* CensusScope, Segregation: Dissimilarity Indices, https://bit.ly/3ki46V4.

- In the Town of Islip in Suffolk County, a federal court recently approved a landmark consent decree replacing Islip's at-large election structure for the Town Board with district-based elections in order to resolve alleged violations of Section 2 of the Voting Rights Act. *See Flores v. Town of Islip*, No. 18-CV-3549, 2020 WL 6060982 (E.D.N.Y. Oct. 14, 2020). The District Court found that all three *Gingles* preconditions were satisfied in that case.

- In the Town of Hempstead in Nassau County, a federal court found that the at-large structure of for Town Board elections violated Section 2 of the Voting Rights Act and ordered the implementation of district-based elections as a remedy for the unlawful election structure. *Goosby v. Town of Hempstead*, 956 F. Supp. 326 (E.D.N.Y. 1997), *aff'd*, 180 F.3d 476 (2d Cir. 1999).

- In 2003, a federal court determined that the Suffolk County Legislature violated the Voting Rights Act of 1965 by failing to redraw the county legislature map in a timely fashion, prompting ongoing judicial oversight of the redistricting process. *See Montano v. Suffolk Cty. Legislature*, 263 F. Supp. 2d 644, 646 (E.D.N.Y. 2003).

In light of these current and historical conditions, there is an enhanced risk of racial vote dilution on Long Island and it is critical that the Commission takes great care to ensure that Long Island's voters of color are afforded an equal opportunity to elect candidates of their choice.

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Please feel free to contact Michael Pernick at (917) 790-3597 or by email at mpernick@naacpldf.org with any questions or to discuss these issues in more detail. We also commend you to read ***Power on the Line(s): Making Redistricting Work for Us***,[8] a guide for community partners and policy makers who intend to engage in the redistricting process at all levels of

[8] *See* NAACP Legal Defense and Educational Fund, Inc., Mexican American Legal Defense and Educational Fund, and Asian Americans Advancing Justice | AAJC, *Power on the Line(s): Making Redistricting Work for Us*, (2021), https://bit.ly/3ogg6pS.

government. The guide provides essential information about the redistricting process, such as examples of recent efforts to dilute the voting power of communities of color and considerations for avoiding such dilution. The guide includes clear, specific, and actionable steps that community members and policy makers can take to ensure that the voices of voters of color are heard in the redistricting process including by promoting community participation in public redistricting hearings, holding legislators accountable in the redistricting process, and notifying civil rights organizations like LDF, MALDEF, and Advancing Justice | AAJC if there becomes a need to challenge discriminatory redistricting in court.

Sincerely,

/s/ *Michael Pernick*
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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 education, economic justice, political participation, 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 shares its commitment to equal rights.