

September 10, 2021

Sent via email

Ashley E. Bass
Cashe Coudrain & Bass
106 South Magnola St.
Hammond, LA 70403

**Re: Tangipahoa Parish School Board Compliance with Section 2 of
the Voting Rights Act**

Dear Ms. Bass:

We write in response to your August 18, 2021 letter concerning Tangipahoa Parish School Board redistricting.

First, you note that our August 16, 2021 letter relies on population estimates rather than data from the US Census. At the time that our August 16 letter was prepared, the only data available were population estimates from the Census Bureau's 2015-2019 American Community Survey. Since then, we have performed an updated analysis using recently released 2020 Census data and can confirm that the conclusions from our August 16 letter remain unchanged: Based on data from the 2020 Census, it is possible to draw various iterations of maps for the Tangipahoa School Board that are comprised of three majority-minority opportunity districts and otherwise comply with federal and state requirements.

We have attached in **Appendix 1** a new illustrative School Board map with nine districts in which three districts are comprised of a majority of Black voters, prepared using 2020 Census data. To reiterate, the map in Appendix 1 is just one of many versions of a nine-single-member school board map that can be drawn with three majority-Black districts using 2020 Census data.

Second, you note that it is a "common misconception that the minimum number of majority-minority districts is determined by a proportional population review." To be clear, our August 16 letter does not state that the number of majority-minority opportunity districts should be based solely on a proportional population review. Rather, as explained in our letter, our conclusion that a Tangipahoa School Board map with only two majority-minority opportunity districts may violate Section 2 of the Voting Rights Act is based on our analysis of the facts under the legal test

established by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986) and other governing cases and statutes. For the reasons explained in our August 16 letter—and confirmed by the analyses we continue to conduct—each of the three *Gingles* preconditions are likely present in Tangipahoa Parish, and there is ample evidence to show that under the totality of the circumstances, Black voters have less opportunity than other members of the electorate to participate in the political process and elect candidates of their choice.

Third, you write: “The current redistricting plan was precleared by the United States Department of Justice after its adoption in 2012. . . . Therefore, it is highly unlikely that a court would conclude contrary to the preclearance issued by the US DOJ.” Your conclusion is incorrect. The Department of Justice (“DOJ”) preclearance determinations are based on compliance with **Section 5** of the Voting Rights Act, which employs a different legal standard than Section 2 of the Voting Rights Act. Under Section 5, DOJ objected to maps that were “retrogressive,” *i.e.* the new map would weaken the ability of Black voters to participate in the democratic process when compared to the previous map.¹ Notwithstanding Section 5’s protections, a court alternatively or may also find that a map violates Section 2 if it is found to dilute minority voting strength based on an analysis under the *Gingles* framework, *regardless* of whether the map is retrogressive when compared to the benchmark map.² That is to say a map may violate Section 5 *and/or* Section 2. The Supreme Court has stated in no uncertain terms that, “We refuse to equate a Section 2 vote dilution inquiry with the Section 5 retrogression standard.” *See Georgia v. Ashcroft*, 539 U.S. 461 (2003).

Indeed, federal courts—including the Supreme Court—have repeatedly held that district maps violated Section 2 even though those maps had been precleared by DOJ under Section 5.³ Consistent with this well-established understanding of the relationship between Section 2 and Section 5, DOJ’s January 24, 2013 letter

¹ *Beer v. United States*, 425 US 130, 141 (1976); *see also* United States Department of Justice, *About Section 5 of the Voting Rights Act*, <https://www.justice.gov/crt/about-section-5-voting-rights-act>.

² *Thornburg v. Gingles*, 478 U.S. 30 (1986); *see also* United States Department of Justice, *Guidance under Section 2 of the Voting Rights Act*, <https://www.justice.gov/opa/press-release/file/1429486/download>.

³ *See, e.g., League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 480 (2006) (holding that Texas’s congressional redistricting plan violated Section 2 of the VRA, notwithstanding the fact that the plan had been precleared by DOJ under Section 5 following the 2000 Census); *St. Bernard Citizens For Better Gov’t v. St. Bernard Par. Sch. Bd.*, No. CIV.A. 02-2209, 2002 WL 2022589, at *2 n.2 (E.D. La. Aug. 26, 2002) (declaring a school board redistricting plan invalid under Section 2, notwithstanding the fact that the plan had been precleared by DOJ); *Benavidez v. Irving Indep. Sch. Dist.*, No. 3:13-CV-0087-D, 2014 WL 4055366, at *19 (N.D. Tex. Aug. 15, 2014) (same, noting that “the Supreme Court has repeatedly recognized that § 2 and § 5 have different aims with different requirements, and that a change that is permissible under § 5 may in fact violate § 2”).

concerning the 2012 Tangipahoa Parish School District map includes the important caveat that “Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change.”⁴

* * *

As we explained in our August 16, 2021 letter, the Tangipahoa School Board has an affirmative obligation to ensure its compliance with the Voting Rights Act, including whether it is necessary to develop an additional majority-Black opportunity district to provide Black voters with an equal opportunity to elect candidates of their choice.

We are happy to discuss our concerns further and to provide assistance to help ensure the School Board creates a districting plan that satisfies its obligations under the Voting Rights Act, U.S. Constitution, and other requirements and considerations. Please feel free to contact LDF Redistricting Counsel Michael Pernick at (917) 790-3597 or by email at mpernick@naacpldf.org with any questions or to discuss these issues in more detail.

Sincerely,

/s/ Michael Pernick

Michael Pernick

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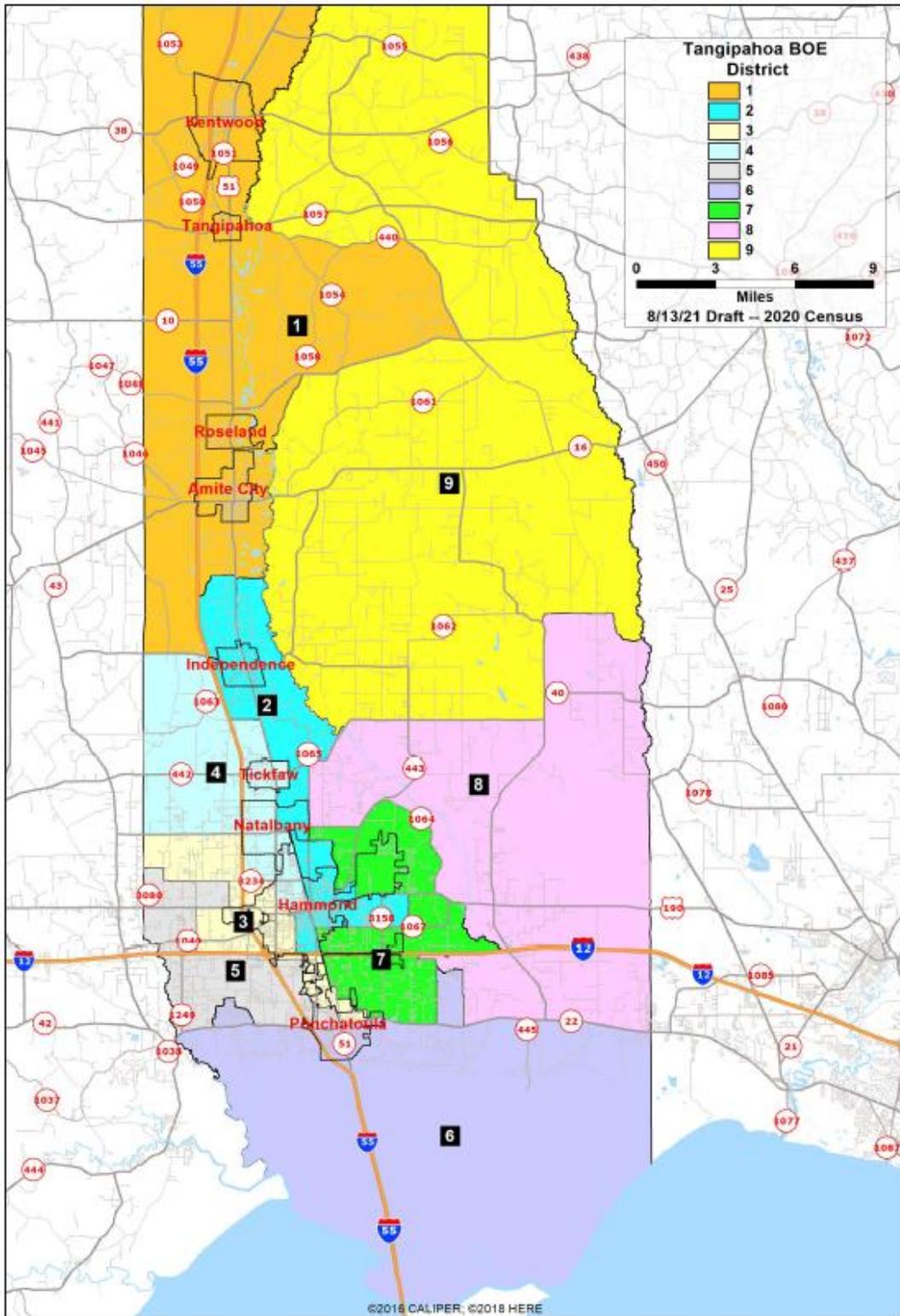
⁴ See Jan. 24, 2013 DOJ Letter re Tangipahoa Parish School District Redistricting Plan.

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.

APPENDIX 1

Illustrative Map with Three Majority-Minority Opportunity Districts Drawn Using 2020 Census Data



APPENDIX 2

Demographics for Illustrative Map (Appendix 1)

District	2020 Census Population	Population Deviation	Deviation Percent	BVAP	BVAP Percent
1	14563	-232	-1.57%	6373	57.50%
2	15155	360	2.43%	5733	50.18%
3	15189	394	2.66%	5830	52.68%
4	14578	-217	-1.47%	3190	26.72%
5	14764	-31	-0.21%	1923	16.87%
6	14763	-32	-0.22%	1430	12.71%
7	14806	11	0.07%	2116	19.04%
8	14275	-520	-3.51%	997	9.28%
9	15064	269	1.82%	1625	14.17%