December 7, 2021

Sent via email

Abbeville City Council
101 N State Street
Abbeville, LA 70510

Re: Abbeville Council Compliance with Section 2 of the Voting Rights Act

Dear Members of the Abbeville City Council:

The Southern Poverty Law Center ("SPLC"), the NAACP Legal Defense and Educational Fund, Inc. ("LDF"),[1] and the Vermilion NAACP Branch write to urge the Abbeville City Council ("City Council") to delay adopting a new City Council redistricting plan until it has had time to seek and consider public input and to evaluate whether Section 2 of the Voting Rights Act of 1965 ("Section 2") requires the City Council to enact a map during the upcoming redistricting cycle with two districts comprised of a majority of Black voters ("majority-Black districts") and to discontinue its practice of electing one member on an at-large basis.

I. Background

Abbeville voters elect five city council members; four members are elected from single-member districts ("SMDs") and a fifth is elected on an at-large basis. According to the 2020 Census, Abbeville's total population is 42.7% Black, and its voting age population is 38.5% Black.[2] Notwithstanding Abbeville's significant population of

---

[1] Since 1957, LDF has been a separate entity from the NAACP and its state and local branches. LDF and the NAACP have won numerous cases challenging discriminatory methods of election in Louisiana and elsewhere. *See, e.g.*, *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Chisom v. Roemer*, 501 U.S. 380 (1991); *Alabama State Conf. of NAACP v. City of Pleasant Grove*, 372 F. Supp. 3d 1333 (N.D. Ala. 2019); *Dillard v. Greensboro*, 956 F. Supp. 1576 (M.D. Ala. 1997) (LDF successfully challenging at-large elections).

[2] *See* 2020 U.S. Census, https://data.census.gov/cedsci/table?g=1600000US2200100&d=DEC%20Redistricting%20Data%20%28PL%2094-171%29&tid=DECENNIALPL2020.P1.

Black voters, the City Council currently has only one Black member (and four white members). Based on demographics alone, Abbeville's Black voting community is substantially underrepresented on the City Council.

II. The Abbeville City Council Has an Obligation to Comply with Section 2 of the Voting Rights Act in Redistricting.

Louisiana law mandates that the City Council reapportion its districts after each decennial census;[3] that is, the City Council must balance the population of Abbeville residents as equally as possible among the four city council districts to comply with the "one person, one vote" principle under the U.S. Constitution's Equal Protection Clause.[4]

The City Council also has a post-census obligation to ensure that the City Council map complies with the Voting Rights Act in the redistricting process. Section 2 of the Voting Rights Act requires the redistricting body 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.[5] A chief purpose of Section 2 is to prohibit minority vote dilution at all levels of government, including city council elections.[6]

Section 2 prohibits minority vote dilution regardless of whether a plan was adopted with a discriminatory purpose.[7] What matters under Section 2 is the effect of the redistricting plan on the opportunity of voters of color to elect candidates of their choice. A district map may violate Section 2 when it dilutes the voting power of voters of color. Vote dilution can result from "packing" Black voters into districts where they constitute an excessive majority and depriving them of the ability to elect their candidates of choice in other districts.

---

[3] La. Rev. Stat. Ann. § 18:1921; La. Rev. Stat. Ann. § 18:1922.

[4] For local elections, a 10% maximum population deviation is presumptively valid. *See Brown v. Thomson*, 462 U.S. 835, 842 (1983) ("Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations."). The state may justify population deviations over 10% if the plan "may reasonably be said to advance [a] rational state policy" and, if so, "whether the population disparities among the districts that have resulted from the pursuit of this plan exceed constitutional limits." *Id.* at 843.

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

[6] *See, e.g., E. Jefferson Coal. for Leadership & Dev. v. Par. of Jefferson*, 926 F.2d 487, 489 (5th Cir. 1991).

[7] *Id.* at 35.

The use of at-large elections in which all eligible voters in a jurisdiction vote for candidate(s) can also operate to diminish the voting strength of Black voters in violation of Section 2.[8] At-large methods of election are often discriminatory because they, in combination with racially polarized voting, prevent voters of color from electing their candidates of choice where they are not the majority in the jurisdiction.[9] Under this system, the votes of voters of color often are drowned out or submerged by the votes of a majority of white voters who often do not support the candidates preferred by Black voters.

The U.S. Supreme Court has established the following three "*Gingles* preconditions*" for evaluating vote dilution under Section 2: whether (1) an illustrative districting plan can be drawn that includes an additional district in which the minority community is sufficiently large and geographically compact to constitute a majority in a SMD; (2) the minority group is politically 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 in support of different candidates.[10] Together, the second and third *Gingles* preconditions are commonly referred to as racial bloc or racially polarized voting.[11]

After a plaintiff establishes the three *Gingles* preconditions, a "totality of circumstances" analysis is conducted 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."[12] It will be "only the very unusual

---

[8]   *Gingles*, 478 U.S. at 47-48.
[9]   *See* NAACP Legal Defense and Educational Fund, Inc., *At-Large Voting Frequently Asked Questions*, https://www.naacpldf.org/wp-content/uploads/At-Large-Voting-Frequently-Asked-Questions-1.pdf.
[10]   *Id*. at 50-51.
[11]   Racially polarized voting occurs when different racial groups vote for different candidates. In a racially polarized election, Black people vote together for their preferred (usually Black) candidate, and most non-Black voters vote for the opposing (usually white) candidate.
[12]   52 U.S.C. § 10301(b); *see also LULAC v. Perry*, 548 U.S. 399, 425 (2006). Courts examine the "totality of the circumstances" based on the so-called Senate Factors, named for the Senate Report accompanying the 1982 Voting Rights Act amendments in which they were first laid out. *Gingles*, 478 U.S. at 43-45. 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 the locality uses voting practices that may enhance the opportunity for discrimination; (4) whether Black candidates have access to candidate slating processes; (5) the extent to which Black voters bear the effects of discrimination in areas of life like education, housing, and economic opportunity; (6) whether political campaigns have been characterized by overt or subtle racial appeals; (7) the extent to which Black people have been elected to public office; (8) whether elected officials are

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."[13]

III. A New City Council Map with Only One Majority-Black District Likely Violates Section 2 of the Voting Rights Act.

A new City Council map will likely violate Section 2 of the Voting Rights Act if it fails to provide Abbeville voters with an equal opportunity to elect candidates of their choice through the development of <u>two</u> majority-Black districts.

There are two specific defects in the City Council method of elections that the council must address when adopting a new plan. *First*, the City Council's use of an at-large district is likely discriminatory because the at-large structure denies Abbeville's Black voters an equal opportunity to elect candidates of their choice to one of the five City Council seats. The Supreme Court has long recognized that voting schemes involving at-large elections can run afoul of the VRA by minimizing or canceling out the voting strength of Black voters.[14] "The theoretical basis for this type of impairment is that where minority and majority voters consistently prefer different candidates, the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters."[15] That is precisely the case here. Black-preferred candidates are consistently outvoted by candidates preferred by white voters within the City of Abbeville. Although Black voters make up approximately two-fifths of the population of Abbeville, no Black candidate has ever been elected to the City Council's at-large seat. Compliance with the VRA likely requires the City Council to replace its at-large seat with a seat elected from a fifth ("SMD").

Second, the configuration of the remaining four districts is discriminatory because Abbeville's Black voters are packed into just one district, denying Abbeville's Black voters an equal opportunity to elect candidates of their choice in any of the remaining three districts.

Courts apply the three *Gingles* preconditions to assess the legality under Section 2 of both at-large elections *and* the configuration of single-member district

---

responsive to the needs of Black residents; and (9) whether the policy underlying the voting plan 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.

[13] *Clark v. Calhoun Cty.*, 21 F.3d 92, 97 (5th Cir. 1994).

[14] *Gingles,* 478 U.S. at 47.

[15] *Id.*

maps. For the reasons explained below, each of the three *Gingles* preconditions are likely satisfied in Abbeville, and any map that continues to deny Abbeville's Black voters an equal opportunity to elect candidates of their choice—either through at-large structures or discriminatory district maps—likely violates Section 2 of the Voting Rights Act.

a. *Gingles* Precondition One: It Is Possible to Develop a City Council Map with Two Majority-Black Districts.

Based on our analysis, there are multiple ways to draw two majority-Black City Council districts in Abbeville.

First, if the City Council's at-large district is eliminated, and a new map is drawn with five districts, it is possible draw two majority-Black districts that also satisfy other traditional redistricting principles. That is, two districts can be drawn that are contiguous, , that include compact communities of Black voters, and that respect communities of interest, among other considerations. **Appendix 1** presents an illustrative five-district map in which two-districts are majority-Black.

Second, even if the City Council opts to retain the at-large district and proceeds to draw a map with four districts, it is still possible to draw two majority-Black districts that respect the above-mentioned traditional redistricting principles. **Appendix 2** presents an illustrative four-district map in which two districts are majority-Black. Accordingly, the first *Gingles* precondition could readily be satisfied.[16]

b. *Gingles* Preconditions Two and Three: Abbeville City Council Elections Reflect Racially Polarized Voting Patterns.

There is ample evidence to suggest that City Council elections in Abbeville are racially polarized, satisfying the remaining two *Gingles* preconditions. We have analyzed six recent racially contested elections and found that, in each election, Black voters in Vermilion Parish—and in Abbeville specifically—are politically cohesive in their support for their preferred candidates, and white voters consistently vote as a bloc to defeat those candidates. This suggests that the current map, in combination with racially polarized voting patterns, are diluting the votes of Black people in Abbeville and depriving them of the opportunity to elect candidates of their choice.

---

[16]   *See Gingles*, 478 U.S. at 50.

IV. The Abbeville City Council Should Eliminate Its At-Large Seat and Adopt a Map With Five Districts, of Which Two Are Majority-Black.

For the reasons explained above, the City Council must consider its obligations under the Voting Rights Act, including whether it is necessary to eliminate the at-large district and draw a map with a second majority-Black district to provide Black voters with an equal opportunity to elect candidates of their choice.

A failure by the City Council to comply with Section 2 may lead to costly and unnecessary litigation, which often incurs millions of dollars in legal fees.[17] We therefore urge the City Council to consider plans that ensure non-dilution of Black voting strength in Abbeville.

We are happy to provide the City Council with more detailed images or shapefiles of the maps in **Appendices 1 and 2** and to discuss other iterations of illustrative maps for the City Council that would comply with the Voting Rights Act and the U.S. Constitution. Please feel free to contact Liza Weisberg at (470) 708-0560 or liza.weisberg@splcenter.org, or Michael Pernick at (917) 790-3597 or mpernick@naacpldf.org with any questions or to discuss these issues in more detail. We also recommend that you digest *Power on the Line(s): Making Redistricting Work for Us*,[18] a guide for community partners and policy makers who intend to engage in the redistricting process at all levels of government, as well as recent guidance issued by the United States Department of Justice concerning compliance with Section 2 of the Voting Rights Act.[19]

Sincerely,

---

[17] One school district recently paid its lawyers in excess of $7 million for unsuccessfully defending a Section 2 lawsuit brought by a local NAACP branch and was also ordered to pay over $4 million in plaintiffs' attorneys fees and costs. 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 (S.D.N.Y. Dec. 29, 2020). *See also* NAACP Legal Defense and Educational Fund, Inc., *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation as of September 2021*, NAACP Legal Defense and Educational Fund, https://www.naacpldf.org/wp-content/uploads/Section-2-costs-9.19.21-Final.pdf (last visited Oct. 30, 2021).

[18] *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.

[19] *See* United States Department of Justice, *Guidance Under Section 2 of the Voting Rights Act, 52 U.S.C. 10301, for Redistricting and Methods of Electing Government Bodies* (Sept. 1 , 2021), https://www.justice.gov/opa/press-release/file/1429486/download.

/s/ *Liza Weisberg*
Liza Weisberg, Staff Attorney
Caren E. Short, Senior Supervising Attorney
Southern Poverty Law Center
P.O. Box 1287
Decatur, GA 30031

/s/ *Michael Pernick*
Michael Pernick, Redistricting Counsel
Leah C. Aden, Deputy Director of Litigation
Stuart Naifeh, Manager of the Redistricting Project
Jared Evans, Policy Counsel
NAACP Legal Defense & Educational Fund,
  Inc.
40 Rector Street, 5th Fl.
New York, NY 10006

/s/ Joseph Pillette
Joseph Pillette, President
Vermilion Parish NAACP Branch
P.O. Box 1037
Abbeville, LA 70510

/s/ John N. Adcock
John N. Adcock
Adcock Law LLC
3110 Canal Street
New Orleans, LA 70119

Southern Poverty Law Center ("SPLC")

The SPLC is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people.

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

7

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.

Adcock Law LLC

Adcock Law is a law firm devoted to plaintiff side civil rights litigation in the areas of housing and employment discrimination, whistleblower protection, election disputes, and prison litigation.

APPENDIX 1

Abbeville City Council Illustrative Five-District Map with Two Majority-Black Districts (Eliminating the At-Large District)
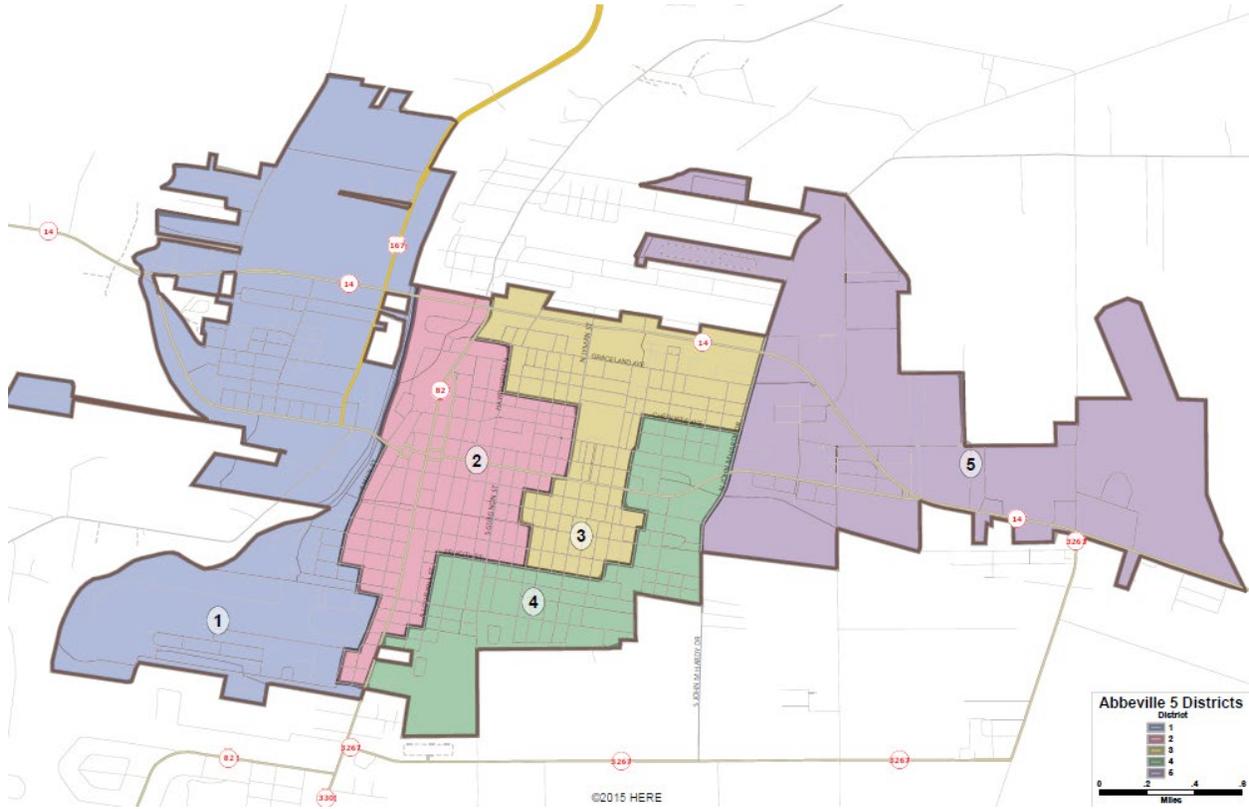
District	Population	Deviation	% Deviation	% Black Population	% White Population	Voting Age Population (VAP)	% Black VAP	% White VAP
1	2292	55	2.5%	13.6%	72.9%	1770	10.8%	76.7%
2	2175	-62	-2.8%	32.8%	51.1%	1657	27.6%	57.8%
3	2265	28	1.3%	64.9%	26.3%	1700	62.9%	28.7%
4	2278	41	1.8%	69.0%	25.1%	1592	64.1%	30.1%
5	2176	-61	-2.7%	39.8%	46.9%	1577	31.3%	54.9%

APPENDIX 2

Abbeville City Council Illustrative Four-District Map with Two Majority-Black Districts (Retaining the At-Large District)
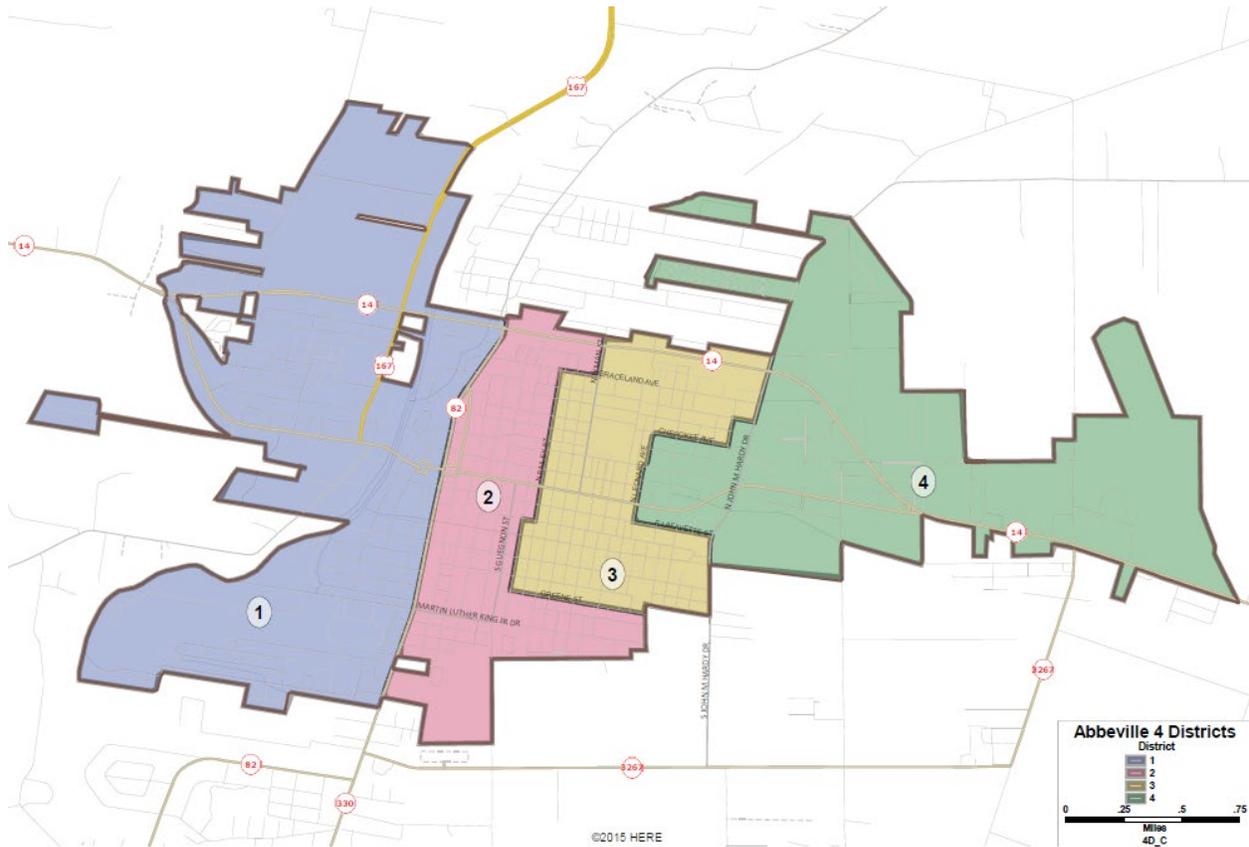
District	Population	Deviation	% Deviation	% Black Population	% White Population	Voting Age Population (VAP)	% Black VAP	% White VAP
1	2875	78	2.8%	13.8%	71.6%	2239	11.3%	75.5%
2	2846	49	1.8%	63.4%	27.5%	2048	59.0%	32.2%
3	2709	-88	-3.1%	61.4%	29.1%	1998	58.2%	33.1%
4	2756	-41	-1.5%	38.7%	48.7%	2011	30.2%	56.5%