



March 28, 2022

*Sent via email*

President David Tatman  
East Baton Rouge Parish School Board  
1050 S. Foster Drive  
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**Re: Additional Concerns Regarding the East Baton Rouge Parish School Board Redistricting Process**

Dear President Tatman, Madame Vice President Collins, and Members of the East Baton Rouge Parish School Board,

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”), the Southern Poverty Law Center, the NAACP Louisiana State Conference, Louisiana Progress, Black Voters Matter Fund, Progressive Social Network and Power Coalition for Equity and Justice write to remind the East Baton Rouge Parish School Board of the obligations imposed by Section 2 of the Voting Rights Act of 1965 (“Section 2”) during the redistricting process that is currently underway. Only three (3) of the nineteen (19) maps the Board plans to vote to adopt on Wednesday, March 30, 2022, may comply with Section 2 according to a recent analysis. Equally alarming, the Board’s Process for Redistricting adopted last week does not provide any mechanism by which the Board plans to ensure the map ultimately adopted by a favorable vote of five members will comply with federal law at all, nor incorporate the public’s comments during that meeting.<sup>1</sup> Given the Board’s record of intentionally discriminatory policies towards Black students and residents, as well as the uncharacteristic

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<sup>1</sup> Memo from Dawn Collins, Vice Pres. of the School Board, to General Counsel & Board (Mar. 16, 2022), [https://go.boarddocs.com/la/ebrp/Board.nsf/files/CCKRYK6F9060/\\$file/Redistricting%20Process-Memo.pdf](https://go.boarddocs.com/la/ebrp/Board.nsf/files/CCKRYK6F9060/$file/Redistricting%20Process-Memo.pdf)

circumstances surrounding this redistricting cycle,<sup>2</sup> **we urge the Board to 1) adopt only those School Board maps that comply with federal law, including Section 2; and 2) give the public a meaningful opportunity to provide feedback on any proposed maps adopted on March 30, LA. Rev. State 17:58.2, and meaningfully incorporate that public feedback into any ratified map.**

For the reasons described below, as well as our letter dated February 10, 2022 (“February Letter”),<sup>3</sup> we respectfully urge you to take these items up at the March 30, 2022 Board meeting.

## **I. The Redistricting of the East Baton Rouge Parish School Board Must Comply with Section 2 of the Voting Rights Act.**

As outlined in detail in the February Letter, the East Baton Rouge School Board has an affirmative obligation to comply with Section 2 of the Voting Rights Act in enacting a new redistricting plan. The East Baton Rouge school system is the third largest in Louisiana and includes the second highest number of Black students.<sup>4</sup> Black students comprise 71.9% of the East Baton Rouge student body, while white students comprise only 11.4%.<sup>5</sup> The Black voting age population of East Baton Rouge is larger (at 45%) than the white voting age population (43%). Yet Black voters in East Baton Rouge Parish have long been denied an equal opportunity to participate in the political process and elect candidates of their choice to the School Board. For at least the last decade, the School Board’s districting scheme has diluted the power of Black voters.<sup>6</sup> As a result, candidates preferred by Black voters have consistently constituted a minority of the Board’s membership.

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<sup>2</sup> See, e.g., Charles Lussier, *Mudslinging, Racial Divide: Inside East Baton Rouge School Board’s Redistricting Feud*, The Advocate (Nov. 2, 2021), [https://www.theadvocate.com/baton\\_rouge/news/education/article\\_fc17f4b8-4b05-11ec-8689-3721efaa3c8e.html](https://www.theadvocate.com/baton_rouge/news/education/article_fc17f4b8-4b05-11ec-8689-3721efaa3c8e.html); Terry L. Jones, *Population Shifts Set Stage for More Majority-Minority Districts on East Baton Rouge Metro Council*, The Advocate (Jan. 23, 2022), [https://www.theadvocate.com/baton\\_rouge/news/article\\_fae564f4-7adf-11ec-bb0f-73b32a89b33d.html](https://www.theadvocate.com/baton_rouge/news/article_fae564f4-7adf-11ec-bb0f-73b32a89b33d.html); NAACP Pens EBR Parish School Board Requesting Changes to Current Redistricting Process, BRProud.com (Mar. 17, 2022), <https://www.brproud.com/news/local-news/naacp-pens-ebrr-school-board-requesting-changes-to-current-redistricting-process/>.

<sup>3</sup> Letter from NAACP LDF, et al., to East Baton Rouge Parish School Board (via email Feb. 10, 2022) <https://www.naacpldf.org/wp-content/uploads/20220210-Coalition-Letter-to-EBR-School-Board.pdf>.

<sup>4</sup> *Oct 2021 Multi Stats (Total by Site and School System)*, Louisiana Department of Education, <https://www.louisianabelieves.com/resources/library/student-attributes> (last visited Mar. 25, 2022).

<sup>5</sup> *Id.*

<sup>6</sup> In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the U.S. Supreme Court set forth three preconditions for assessing whether a districting plan or voting system has resulted in vote dilution. The three “*Gingles* preconditions” are whether: (1) an alternative districting plan can be drawn that includes one or more single member districts in which the minority community is sufficiently large and geographically compact to constitute a majority in the district; (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 other voters in support of different candidates. *Gingles*, 478 U.S. at 35. If these three *Gingles* preconditions are met, a court must then evaluate the “totality of circumstances” to

Our extensive analysis of the relevant law, data, voting patterns, and other relevant circumstances in East Baton Rouge yields a straightforward conclusion: regardless of the size of the School Board, it is both easy and necessary to draw a redistricting plan in which at least half of the districts are majority-Black.<sup>7</sup> That is, Section 2 of the Voting Rights Act likely requires the School Board to develop a redistricting plan with five majority-Black districts in a nine-member plan, six majority-Black districts in an eleven-member plan, or eight majority-Black districts in a fifteen-member plan. It is harmful and unlawful to continue to pack Black voters into fewer than half of the School Board’s districts.

## **II. Few of the Redistricting Plans the School Board Plans to Consider on March 30, 2022 Comply with Section 2, Some Do Not Comply with Federal Law At All.**

According to a recent analysis, most of the redistricting plans the Board is considering for adoption at the March 30, 2022, School Board meeting do not comply with Section 2. As a result of racially polarized voting in East Baton Rouge Parish, any districting plan that does not allow Black voters to constitute a majority in a district is likely to operate to deny Black voters the opportunity to elect their preferred candidates in that district. As the School Board is aware, the Black voting age population well exceeds the white voting age population of East Baton Rouge Parish. Yet most of the nineteen (19) proposed maps under consideration by the Board would ensure that candidates preferred by Black voters would never hold a majority of the seats on the Board. Unsurprisingly, many also do not comply with a fundamental requirement for developing any legislative redistricting plan—the one person, one vote principle—or state law governing the redistricting process.

A recent internal analysis conducted in coordination with the undersigned analyzes each of the East Baton Rouge Parish School Board’s nineteen proposed redistricting plans on the basis of compliance with the one person, one vote principle, compliance with Section 2 of the Voting Rights Act (i.e., non-dilution of minority voting power), contiguous districts, compactness, preservation of communities of interest, and other state laws governing redistricting like use of physical boundaries and avoiding precinct splits. That analysis concludes that fifteen (15) of the nineteen plans likely violate the Voting Rights Act, the one person, one vote principle, or both.

Under sixteen (16) of the maps under consideration by the School Board, Black voters in East Baton Rouge Parish would be able to elect candidates in proportionally *fewer* school districts than their share of the population. *See Johnson v. DeGrandy*,

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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); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 425 (2006). Courts consider several factors (commonly known as the “Senate Factors”) to determine whether, under the totality of the circumstances, the minority vote has been diluted impermissibly. *Gingles*, 478 U.S. at. 45. It 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.” *Clark v. Calhoun Cty.*, 21 F.3d 92, 97 (5th Cir. 1994).

<sup>7</sup> See Letter from NAACP LDF, et al., *supra* note 3.

512 U.S. 997 (1994). Only three of the proposed maps develop a majority of seats on the Board where Black voters could elect their candidates of choice, with a fourth map possibly creating conditions to allow Black voters to elect candidates of choice to a majority of the School Board districts only some of the time. Such an outcome is not only prohibited by Section 2 (*supra* Section I), but also raises additional constitutional concerns regarding the actions of the School Board more generally.

Eight (8) of the nineteen (19) plans do not comply with the one person, one vote principle because they have maximum population deviations of greater than ten percent (10%). Under the one-person, one-vote principle, jurisdictions must design legislative districts with equal populations. *Evenwel v. Abbott*, 578 U.S. 54 (2016); *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964); *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). In the context of state and local legislative districting, States may deviate somewhat from perfect population equality to accommodate traditional districting objectives. *See Brown v. Thomson*, 462 U.S. 835, 842–843 (1983). A maximum population deviation<sup>8</sup> between the largest and smallest district of greater than 10% “creates a prima facie case of discrimination and therefore must be justified.” *Id.*

That most of the nineteen (19) redistricting plans being considered for adoption at the Board’s March 30 meeting appear to blatantly violate federal law is not surprising given the lack of transparency with which the Board has engaged the redistricting process: From the hiring and firing of the Board’s demographers, to the failure to properly publish proposed maps to the rushed adoption process, the School Board has shirked responsibility for compliance with the law and protecting the voters and children of the Parish (see *infra* Section III). These decisions have consequences for the next decade. The School Board should take its responsibility to comply with federal law seriously *during* the redistricting process, rather than requiring a court to step in to enforce the law for the Board after the fact.

### **III. The East Baton Rouge Parish School Board Must Meaningfully Incorporate Public Input Before Ratifying a Final Redistricting Plan.**

To date, the redistricting process for the East Baton Rouge Parish School Board has been marred by procedural irregularities.<sup>9</sup> Most recently, the School Board was

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<sup>8</sup> Maximum population deviation is the sum of the percentage deviations from perfect population equality of the most- and least-populated districts. *Chapman v. Meier*, 420 U.S. 1, 22 (1975).

<sup>9</sup> In the redistricting context, “departures from the normal procedural sequence” of the type seen here can evince discriminatory intent violative of the Fourteenth Amendment to the U.S. Constitution’s Equal Protection Clause. *See Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267-68 (1977); *Veasey v. Abbott*, 830 F.3d 216, 231 (5th Cir. 2016) (en banc). “[H]istorical background” is also probative of discriminatory intent. *Id.* The history of the East Baton Rouge School Board includes, *inter alia*, a 1980 consent decree settling Section 2 lawsuits brought by individual plaintiffs and the United States, *Moch v. East Baton Rouge Parish Sch. Bd.*, 533 F.Supp. 556, 558 (M.D. La. 1980); a school desegregation lawsuit that ran for nearly fifty years, from 1956 to 2003, *see Davis v. East Baton Rouge Sch. Bd.*, 514 F.Supp. 869, 874 (M.D. La. 1981); and a decision to reduce the size of the School Board from eleven members to nine, made over the fierce opposition of members of the NAACP who anticipated that the change would weaken Black

criticized for possibly violating the publication requirements of LA Rev. Stat. § 17:58.2. Since 1982, that statute has mandated that the School Board order a “public hearing” on a proposed redistricting plan and publish in a newspaper within the parish at least twenty days prior to the date of that hearing “the time and place thereof, a general summary and map of the proposed plan and the times and places where copies of the proposed plan are available for public inspection.” LA Rev. Stat. § 17:58.2 (C).

On March 9, 2022, instead of publishing “the proposed plan,” the School Board published nineteen plans. Moreover, it did so without the information required by statute; the plans were accompanied by no notice of public hearings, no summaries, and no indication of when the plans would be available for public inspection. Not until the following day, in a separate article, did a reporter for *The Advocate* specify dates for “three viewings” of the plans and announce a “public forum” to be held on March 26—fewer than twenty days later.<sup>10</sup>

On March 16, 2022, presumably to remedy the School Board’s violation of the statutory publication requirements, Vice President Dawn Chanet Collins issued a memorandum to the School Board and the School Board’s general counsel setting forth a process for adopting a single redistricting plan and holding public hearings.<sup>11</sup> According to this memorandum, if a redistricting plan receives favorable votes from a majority of School Board members at a special meeting on March 30, 2022, community members will have the opportunity to comment on it during public hearings on April 7, 2022 and April 21, 2022. “[F]inal ratification” of the plan will take place on May 5, 2022.

Absent from this memorandum is any process for receiving public input on which of the nineteen (19) map(s) should be adopted or for amending or revising the map(s) based on public comments. The memorandum implies that “ratification” of any plan approved on March 30 is preordained. If this is the case, should the School Board fail to adopt a formal process for incorporating community input, the public hearings will be rendered hollow and perfunctory exercises. They may minimally comply with the letter of LA Rev. Stat. § 17:58.2 (C), but they will violate its purpose and spirit. The School Board must take seriously its duty to receive *and implement* feedback from members of the public in the redistricting process.

For the foregoing reasons, we respectfully urge the Board to 1) adopt only those School Board maps that comply with federal law, including Section 2; and 2) give the

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representation, see *McClanahan v. East Baton Rouge Parish School Board*, No. 2014–CC–1797, 148 So.3d 568 (La. 2014).

<sup>10</sup> Charles Lassiter, *How to see the 19 different proposed election maps for the Baton Rouge school board*, *The Advocate*, March 10, 2022, [https://www.theadvocate.com/baton\\_rouge/news/education/article\\_b4340a4e-9fd1-11ec-90ce-1f72008433c6.html](https://www.theadvocate.com/baton_rouge/news/education/article_b4340a4e-9fd1-11ec-90ce-1f72008433c6.html).

<sup>11</sup> See Memorandum from Dawn Chanet Collins, Vice President of the Board, to General Counsel and Board (Mar. 16, 2022), [https://go.boarddocs.com/la/ebrp/Board.nsf/files/CCKRYK6F9060/\\$file/Redistricting%20Process-Memo.pdf](https://go.boarddocs.com/la/ebrp/Board.nsf/files/CCKRYK6F9060/$file/Redistricting%20Process-Memo.pdf).

public a meaningful opportunity to provide feedback on any proposed maps adopted on March 30, LA. Rev. State 17:58.2, and meaningfully incorporate that public feedback into any ratified map.

We welcome the opportunity to provide the School Board with more detailed images or shapefiles of the maps attached as exhibits to the February Letter and to discuss other iterations of illustrative maps for the East Baton Rouge Parish School Board that would comply with the Voting Rights Act and the U.S. Constitution. We urge you to read *Power on the Line(s): Making Redistricting Work for Us*,<sup>12</sup> a guide for community partners and policymakers who intend to engage in the redistricting process at all levels of government.

Please feel free to contact Kathryn Sadasivan at (332) 600-9546 or at [ksadasivan@naacpldf.org](mailto:ksadasivan@naacpldf.org) with any questions or to discuss these issues in more detail.

Sincerely,

/s/ Kathryn Sadasivan

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<sup>12</sup> See NAACP Legal Def. and Educ. Fund, Inc., Mexican Am. Legal Def. and Educ. Fund, and Asian Ams. Advancing Just. | AAJC, *Power on the Line(s): Making Redistricting Work for Us*, (2021), <https://bit.ly/3ogg6pS>.

### 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.

### 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.