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December 11, 2013

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Re: *City of Beaufort—Your letter of November 4, 2013*

Dear Ms Aden:

I am the Beaufort City Attorney. I have received and I am responding to your letter of November 4, 2013, addressed to the Beaufort Mayor and Council.

Your statement that “no Black candidate has been elected to office [in the City of Beaufort] in recent history” is incorrect. Fred Washington served on City Council from 1979-1993. Alice Wright served on City Council from 1982-1987. Hence, for a period of six (6) years “in recent history”, two African-Americans were elected and served together on the five-member Beaufort City Council in the at-large electoral scheme which has existed in Beaufort for many years.

In the seminal case of *Thornburg v. Gingles*, 478 U.S. 30 (1986), the United States Supreme Court held that to establish a claim of actionable vote dilution under § 2, plaintiffs must establish three “necessary preconditions”: (1) the minority group must be “sufficiently large and geographically compact to constitute a majority in a single-member district,” (2) the minority group must be “politically cohesive,” and (3) the majority must vote “sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate.” *Id.* at 50–51, 106 S.Ct. 2752.

The first *Gingles* precondition requires Plaintiffs to show that the African-American population is “sufficiently large and geographically compact to constitute a majority in a single-member district.” *Gingles*, 478 U.S. at 50, 106 S.Ct. 2752. This precondition is a practical requirement, posing the threshold inquiry of whether a remedy is available; “unless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice.” *Id.* at n. 17. Stated another way, the plaintiff in a § 2 case must demonstrate that if a violation is found, a remedy can be imposed. Unless the African-American population is

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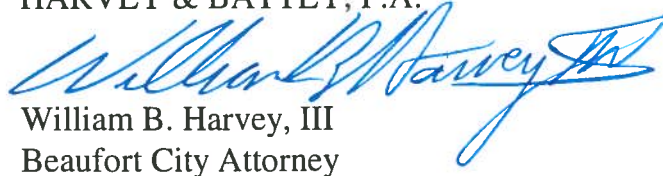
large and compact enough to form a single majority-African-American district, there is no feasible remedy. See also, *Georgia State Conference of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 3:11-CV-123-TCB, 2013 WL 2948147 (N.D. Ga. May 21, 2013) *motion to certify appeal denied*, 3:11-CV-123-TCB, 2013 WL 3336754 (N.D. Ga. July 3, 2013).

We do not believe that four single member districts can be drawn in the City of Beaufort with one district being such that minorities may elect a candidate of their choice and that all pieces of the district are contiguous without using up or down waterways or unincorporated area to connect portions of the district together. As such, we do not believe that the first necessary precondition of *Gingles* can be satisfied.

If you have a proposed map or other demographic information which satisfies this precondition, please send it to me, and we will be willing to review and give it consideration. Additionally, as Mayor Keyserling has earlier stated, we are willing to sit down with you and/or members of the local Branch to openly discuss these concerns.

Beaufort City Council is not, nor has it ever been, a Council of exclusion, either in body or in action. We welcome the input of every citizen into the functioning of City Council and its committees, commissions and other appointed bodies. I look forward to further discussion with you concerning this matter. Please call me at any time.

Very truly yours,  
HARVEY & BATTEY, P.A.

  
William B. Harvey, III  
Beaufort City Attorney

WBHIII/lpb

cc: Scott Dadson, City Manager  
Mayor and Council