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By Email and USPS mail

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Dear Ms. Wilder and Mr. Robinson:

The NAACP Legal Defense and Educational Fund, Inc. (LDF),¹ Attorney Edward Still, the Alabama State Conference of the NAACP, and the Huntsville/Madison County Branch of the NAACP write to express our concerns about the configuration of the five single-member districts for the Huntsville Board of Education (“Board”). Based on our review, we have significant concerns that the current district lines may violate Section 2 of the Voting Rights Act (“VRA”) by diminishing the ability of Black voters to elect candidates of their choice and to participate equally in the electoral process.²

Section 2 prohibits voting standards, practices, or procedures that either are enacted with racially discriminatory intent or have racially discriminatory results.³ One of the chief purposes of Section 2 is to prohibit minority vote dilution. Vote dilution occurs by either “the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the

¹ Since 1957, LDF has been a separate entity from the NAACP and its state branches. LDF and Mr. Still have successfully litigated numerous cases challenging discriminatory election schemes and methods in Alabama and elsewhere. *See, e.g., Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395 (M.D. La. 2017) (LDF successfully challenging the at-large election of state court judges); *Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026 (M.D. Ala. 2017) (Mr. Still successfully challenging Alabama’s packing of majority-minority legislative districts); *Ga. State Conf. of the NAACP v. Fayette Cty. Bd. of Comm’rs*, 118 F. Supp. 3d 1338 (N.D. Ga. 2015) (LDF successfully challenging a county commission’s and school board’s at-large elections); *Dillard v. City of Greensboro*, 956 F. Supp. 1576 (M.D. Ala. 1997) (LDF and Mr. Still successfully challenging an at-large voting plan); *Dillard v. City of Foley*, 926 F. Supp. 1053 (M.D. Ala. 1995) (LDF and Mr. Still successfully challenging selective annexations).

² 52 U.S.C. § 10301(a).

³ *Chisom v. Roemer*, 501 U.S. 380, 394 & n.21 (1991).

concentration of blacks into districts where they constitute an excessive majority.”⁴ These dilutive practices are referred to as “cracking” and “packing,” respectively, and serve to minimize the ability of Black voters to influence elections for the Board and to elect their preferred candidates.⁵

It appears that the present boundaries of the Board’s districts “pack and crack” Black voters within and between districts in a way that prevents fair representation for Black voters.⁶ Although Black people are about 30% of Huntsville’s voting-age population and the five-member City Council has two majority-Black districts, there is only one majority-Black district (District 1) on the five-member Board of Education.⁷ At present, the sole Black member of the Board is elected from District 1.⁸ No Black person has ever represented one of the Board’s four other majority-white districts, despite Black candidates running for those seats.⁹ This suggests that racially polarized voting¹⁰ and the districts’ configuration are diluting Black voters’ electoral influence.¹¹

Until 1988, the Huntsville City Council and the Board of Education conducted elections under a discriminatory at-large electoral system, wherein the votes of Black voters were canceled out by the white majority who voted as a bloc to defeat Black voters’ preferred candidates. A court ordered agreement required the adoption of single-member districts for the City Council and the Board to remedy that discriminatory system and bring both bodies into compliance with Section 2.¹² The most recent redistricting of the Board and City Council occurred in 2011. Unfortunately, the Board’s 2011 redistricting did not establish districts that fully represent Black voting strength.

⁴ *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

⁵ *Voinovich v. Quilter*, 507 U.S. 146, 161 (1993).

⁶ *See Kelley v. Bennett*, 96 F. Supp. 2d 1301, 1311 (M.D. Ala. 2000) (explaining the effects of cracking).

⁷ A disparity between the “number of majority-minority voting districts and the minority group’s share of the relevant population” is probative of a Section 2 violation. *Johnson v. De Grandy*, 512 U.S. 997, 1025 (1994) (O’Connor, J., concurring).

⁸ The list of current Board of Education members is available at *Huntsville City Schools – Board of Education*, <https://www.huntsvillecityschools.org/about/leadership/board-education/> (last visited Jan. 14, 2019).

⁹ For example, African-American candidate Kimberly Battle lost with 42.8 percent of the vote in the 2014 District 4 general election. Similarly, African-American candidate Carlos Mathews lost with 43.9 percent of the vote in the 2016 District 5 general election.

¹⁰ Racially polarized voting occurs when different racial groups vote for different candidates. For example, in a racially polarized election, Black voters would largely cast ballots for one candidate, and the majority of white voters would vote for a different candidate. Racially polarized voting remains pervasive in Alabama. *See Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1273 (2015) (identifying the continued existence of racially polarized voting in Alabama); *United States v. McGregor*, 824 F. Supp. 2d 1339, 1346 & n.3 (M.D. Ala. 2011) (same).

¹¹ *See LULAC v. Perry*, 548 U.S. 399, 403 (2006) (holding that the relocation of a significant number of minority voters into a new adjacent district impermissibly cracked their voting power in violation of Section 2).

¹² Consent Decree, *Grayson v. Madison Cty.*, Civ. No. 84-V-5770-NE (N.D. Ala. Jun. 2, 1988).

Thankfully, however, the Board can work with the City Council to adjust the district lines to ensure equal electoral opportunity for all of Huntsville’s residents.¹³ We write to assist the Board in pursuing this more inclusive and fair course of action, and to avoid the costly and lengthy litigation that may otherwise be necessary to ensure the Board’s compliance with the VRA.¹⁴

To determine whether a redistricting scheme violates Section 2, courts will start by looking at three “*Gingles* preconditions” or factors: (1) whether Black voters in Huntsville are sufficiently large and geographically compact to constitute a majority in a second district; (2) whether Black voters are politically cohesive; and (3) whether bloc voting by white voters usually prevents Black voters from electing their preferred candidates in the Board’s majority-white districts.¹⁵ “[I]t 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.”¹⁶

Here, all three preconditions appear to be satisfied. First, 30 percent of Huntsville’s voting-age population is Black, and the City Council has two majority-minority single-member districts for its five-member body (demonstrating that it is possible to draw a second majority-Black district for the Board of Education).¹⁷ Nonetheless, even as Black voters have supported Black candidates (demonstrating Black cohesion), no Black person has ever won election to the Board in a majority-white district (indicating that whites tend to vote against Black voters’ preferred candidates).¹⁸

In addition to these three key preconditions, the U.S. Supreme Court also instructs courts to consider the nine “Senate Factors” in examining whether the “totality of the circumstances” point towards discrimination.¹⁹ Here, the Senate Factors tend to support the conclusion that the

¹³ ALA. CODE § 11-46-23 (2014) (acknowledging that municipal governing bodies have the authority to adjust their ward boundary lines by ordinance); *see also* CITY COUNCIL RESOLUTION NO. 11-335 (May 12, 2011), <http://www.huntsvilleal.gov/redistricting/ResolutionNo11-335-SettingHearingDates.pdf> (stating that the City Council is responsible for the drawing of the Board districts); City Council Public Hearing on Redistricting (May 26, 2011), <http://www.huntsvilleal.gov/citycouncil/Agendas/Minutes/CCSpecialSessionRedistricting-5-26-2011.txt>.

¹⁴ *See, e.g.*, Federal Judicial Center, *2003-2004 District Court Case-Weighting Study*, Table 1 (2005) (finding that voting cases consume the sixth most judicial resources); John E. Jones, *Appealing District Vote Wastes \$1M*, THE CITIZEN (Dec. 2, 2014), *available at* <http://thecitizen.com/articles/12-02-2014/appealing-district-vote-wastes-1m> (noting that Fayette County, Georgia spent \$1 million unsuccessfully fighting a Section 2 claim). *Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 92 (2005) (“Two to five years is a rough average” for the length of Section 2 lawsuits).

¹⁵ *Gingles*, 478 U.S. at 50-51.

¹⁶ *Ga. State Conf. of NAACP v. Fayette Cty. Bd. of Comm’rs*, 775 F.3d 1336, 1342 (11th Cir. 2015).

¹⁷ *2017-2014 Voting Age Population by Citizenship and Race*, U.S. Census Bureau.

¹⁸ *See supra* n.11.

¹⁹ *Gingles*, 478 U.S. at 36-37. 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 Huntsville 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 socioeconomic discrimination; (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 responsive to Black residents; and (9) whether the policy

configuration of the Board’s districts violate Section 2. For example, Huntsville’s history of racial discrimination in voting, as described above, and the existence of racially polarized voting in local elections are important parts of a vote dilution case and satisfy the first and second Senate Factors.

The Board’s long history of discrimination satisfy the fifth Senate Factor.²⁰ The Board remains subject to a school desegregation order. As recently as 2014, the federal court overseeing this desegregation order ruled that “the tenacious vestiges of *de jure* segregation were negatively affecting the way in which African-American students in the district were treated” in Huntsville’s schools.²¹ Progress remains slow, with the court describing the 2016-17 school year as “rocky.”²²

Black residents of Huntsville bear the effects of this discrimination, which hinders their ability to participate effectively in the political process. For example, the U.S. Census’s 2017-2015 American Community Survey shows that 16.8% of Huntsville’s Black residents, but just 5.5% of white people have not finished high school. In addition, 28.8% of Black family households, but only 5.6% of white families lived below the poverty line last year. Among the working population (ages 16 to 64), 11.8% of Black people and just 5.7% of white people are unemployed. The Black median household income per year (\$30,541) is half that of the white median income (\$66,491).²³

Under the third Senate Factor, the requirement that candidates for the Board win by a majority of the votes cast enhances the discrimination that Huntsville’s Black voters experience.²⁴

underlying the current redistricting scheme 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,

²⁰ Challen Stephens, *Timeline: Race and Schools in Huntsville*, AL.COM (March 4, 2014), available at http://blog.al.com/breaking/2014/03/timeline_race_and_schools_in_h.html.

²¹ *Hereford v. Huntsville Bd. of Educ.*, No. 5:63-CV-00109-MHH, 2015 WL 13398941, at *3 (N.D. Ala. Apr. 21, 2015). (finding that Black students were more likely to be subjected to out-of-school suspensions and that, until recently, each of the majority Black high schools in Huntsville lacked Advanced Placement courses).

The Board’s creation of the SAFe (Students Against Fear) program is another example of the Board being unresponsive to the needs of the Black students. Through SAFe, the Board paid a former FBI agent \$157,000 to investigate the social media accounts of students, which lead to the expulsion of 14 students. Challen Stephens, *Huntsville School Paid \$157,000 for Former FBI Agent, Social Media Monitoring Led to 14 Expulsions*, AL.com (Nov. 1, 2014), http://www.al.com/news/huntsville/index.ssf/2014/11/huntsville_schools_paid_157100.html. Of the 14 students expelled, 12 were African Americans. *Id.*; Rebecca Klein, *Critics Accuse District of Having a Racist Social Media Program*, Huffington Post (Nov. 4, 2014), https://www.huffingtonpost.com/2014/11/04/huntsville-schools-social-media_n_6102562.html. In response to these numbers, Madison County Commissioner Bob Harrison and other advocates accused the Board of using the SAFe program to racially profile and target Black children. *Id.*

²² Anna Claire Vollers, *After ‘Rocky Year,’ Huntsville Moves Forward in Desegregation Case*, AL.com (Sept. 7, 2017), available at http://www.al.com/news/index.ssf/2017/09/after_rocky_year_huntsville_mo.html.

²³ 2017-2013 Am. Community Survey 3-Year Estimates, U.S. Census Bureau, <http://factfinder.census.gov>.

²⁴ ALA. CODE § 11-46-55; see *Wright v. Sumter Cty. Bd. of Elections & Reg.*, 301 F. Supp. 3d 1297, 1319-20 (M.D. Ga. 2018) (describing the discriminatory effect of majority-vote requirements).



Finally, under the ninth Factor, the fact that the Board’s districts are designed differently from the City Council’s districts in a way that appears to serve no other purpose except to weaken Black voting strength in school board elections suggests that the reason for this design is tenuous.

Although Black voters are currently underrepresented on the Board, the Board continues to make important decisions about school curriculum, discipline policies, compliance with the desegregation order, and other matters that affect the Black community. Given the importance of the Board of Education, and its power to shape the educational experiences of Black students and families, federal courts have repeatedly found that similar districting schemes violate Section 2.²⁵

The Board can be a more inclusive body by complying with Section 2 to ensure equal opportunities for Black representation. The City Council can redistrict the district boundaries for the Board through an ordinance passed by majority vote.

We, therefore, urge the Board and City Council to work quickly to make changes that will bring the Board into compliance with Section 2 and avoid the prospect of potential litigation.

We welcome the opportunity to meet with you in-person to amicably work together to resolve this important matter. Please respond us **in writing by Thursday January 24, 2019** with a proposed meeting date. Please also feel free to contact us by phone or email at any time.

Sincerely,

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²⁵ See, e.g., *Teague v. Attala Cty., Miss.*, 92 F.3d 283 (5th Cir. 1996) (finding a Section 2 violation where only one of five council districts were majority-minority, but Black people were 40% of the population); *United States v. Dallas Cty., Ala. Com’n*, 850 F.2d 1433, 1439-40 (11th Cir. 1988) (finding that a school board’s plan violated Section 2 because it failed to reflect Black voting strength); *Wright*, 301 F. Supp. 3d at 1322-23 (finding a Section 2 violation where half of a county’s population was Black, but only two of the seven school board seats were majority-minority).





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