



Joint Testimony of Brenda Murphy, President, South Carolina State Conference of the NAACP; Leah C. Aden, Deputy Director of Litigation, the NAACP Legal Defense and Educational Fund, Inc.; Somil Trivedi, Senior Staff Attorney, American Civil Liberties Union; and Allen Chaney, Director of Legal Advocacy, ACLU of South Carolina

**Before the South Carolina House of Representatives
Redistricting Ad Hoc Committee**

Testimony on Proposed Congressional Redistricting Maps

December 29, 2021

Dear Chair Jordan and Committee Members:

On behalf of the South Carolina State Conference of the National Association for the Advancement of Colored People (“South Carolina NAACP”),ⁱ the NAACP Legal Defense and Educational Fund, Inc. (“LDF”),ⁱⁱ American Civil Liberties Union (“ACLU”), and ACLU of South Carolina, we write to provide comments on this Committee’s proposed redistricting maps for South Carolina’s seven Congressional seats and the process by which it has developed these proposals.

In short, to date, this Committee’s proposed Congressional maps have failed in several material ways. *First*, both the House’s initial and “alternative” proposals fail to reflect the voting strength of Black South Carolinian voters, particularly outside of Congressional district (“CD”) 6. *Second*, both House proposals ensure that there are *no* politically competitive Congressional districts in South Carolina by cracking Black communities to achieve this end. Indeed, both House proposals continue a pattern of consistently flawed Congressional redistricting maps proposed by the South Carolina Legislature this cycle, beginning with the draft Congressional map first proposed by the Senate. To understand the House’s flawed proposed maps to date, we begin by discussing the flaws in the Senate’s initial proposal.

A. The Senate’s Initial Congressional Redistricting Proposal

As the record reflects, the Senate was the first body to propose a draft Congressional map. The Senate’s initial proposed map was widely condemned for several reasons.ⁱⁱⁱ

First, it rendered CD 1—which required some adjustment, as it was overpopulated by 87,689 people as of the 2020 Census data results^{iv}—not politically competitive for *any* voters, even though this Congressional district was competitive in recent Congressional contests under its current configuration.^v

Second, and relatedly, the Senate’s proposal cracked Black voters in several important areas in the state. The Senate’s proposed map, for example, cracked Black communities in the Charleston and North Charleston areas—where Black voters are a cohesive community of interest because of shared history, voting patterns, socioeconomic realities, including where people have access to work, media, and other indicia—as a stratagem to ensure CD 1’s non-

competitiveness.^{vi} The Senate did so despite various proposals, including plans proposed by our coalition, which showed that, while correcting for malapportionment, CD 1 could be drawn as a politically competitive district that respects communities of interest—including communities of interest of Black voters in CD 1—and have a Black voting-age population (“BVAP”) in CD 1 as high as 34%.^{vii} The Senate’s proposed map also unnecessarily splits Black communities in the City of Sumter. And that map also appeared to prioritize an incumbent’s preference to have CD 2 include Fort Jackson, even though accommodating this preference drove CD 2 through Black communities in northwest Richland County, thereby separating them from neighboring communities of Black voters.

Third, the Senate’s proposed map limited the ability of Black voters to elect candidates of their choice or meaningfully influence elections in *every* district outside of CD 6, the historic and vital district, which is the only one comprised of a majority of Black voters in South Carolina. The Senate’s proposal stifled Black electoral opportunities outside of CD 6 even though doing so was neither necessary, as our proposed maps and those of others show, nor appropriate, given public testimony stressing the desire that Black voters’ voices be heard in districts beyond CD 6.^{viii} In a state where Black voters are 29% of the voting-age population (“VAP”), and given South Carolina’s demography, history, and voting patterns, we have warned this body that Black voters must not be packed into a single Congressional district (CD 6) with the opportunity to elect only 14% of the state’s seven-member Congressional delegation. Yet under the Senate’s proposal, Black voters were only 16% of CD 1’s VAP—the lowest BVAP percentage in any district.^{ix} In all other districts, except for CD 6, the BVAP was under 25%.^x This also makes no sense as the Senate has received several plans, including from our coalition, showing that Black voters could have the ability to elect or influence contests in districts outside of CD 6. In one of the plans proposed by our coalition, for example, the BVAP in CD 1 and CD 5 were 34% and 24%, respectively.^{xi} Under this proposed plan, moreover, CD 6 retained a majority-BVAP of 51.6%.^{xii}

Fourth, *no* district in the Senate’s proposed map satisfied the first precondition under the U.S. Supreme Court’s *Thornburg v. Gingles* framework. This analysis asks South Carolina to assess whether an illustrative district can be developed that contains 50%+1 of Black voters who are geographically compact and form a community of interest. Our coalition proposed two maps with such illustrative 50%+1 BVAP districts.^{xiii}

The Senate claimed that its initial map was developed by its staff, but questioning and testimony during the Senate Judiciary Redistricting Subcommittee's November 29 meeting revealed that two of the seven Congressmembers, Reps. Clyburn and Wilson, and a Republican Party-affiliated organization based in Washington, D.C., were given the opportunity to provide input on the draft Congressional map that was not reflected in the Subcommittee's public record, while at least one member of the Senate Redistricting Subcommittee stated that he was offered no opportunity to give his input.^{xiv} It also became clear during the November 29 meeting that members of the Senate Subcommittee had not seen the map before the hearing and were reviewing it for the first time then.^{xv} The Senate promised to incorporate the feedback and make progress.^{xvi}

B. The House's Initial Congressional Redistricting Proposal

The House's initial proposed Congressional map improved over the Senate's in some regards. The initial House proposal restored CD 6's Black VAP above 50%, which satisfies a *Gingles* precondition. It also increased the BVAP percentage in CD 1 so that CD 1 no longer contained the lowest BVAP district of *all* seven districts. And it corrected the split of Black voters in the City of Sumter. Still, the House's initial proposal continued to fall short in several regards, particularly by ensuring that CD 1 would *not* be politically competitive and, relatedly, by splitting communities of interest of Black voters, apparently for partisan advantage and incumbent protection interests.

First, although CD 1 was more competitive in the House's initial map than in the Senate's, it remained less competitive than in maps such as those proposed by our coalition, the League of Women Voters of South Carolina ("SC League of Women Voters"), and other constituents.

Second, and relatedly, like the Senate's proposed map, the House's initial proposal continued to crack Charleston County in ways that appear likely to break up communities of interest and impair Black voters' ability to elect candidates of their choice. As one example, the City of Charleston was cut so that CD 6 would contain certain Black voters, rather than keeping all of Charleston with North Charleston and both wholly within CD 1, as one of our coalition's proposed plans does and other proposed maps did and urged to be done. The House's initial proposal made this split, even though this body has been repeatedly warned that CD 6 does not need additional Black voters to continue as an ability-to-elect district and even though there are several

proposed maps for this body's consideration, including those offered by our coalition and the SC League of Women Voters, that show that Charleston's (and North Charleston's) Black voters can and likely should be kept together as a community of interest. **To be clear, the cohesive Black communities in Charleston and North Charleston do not need to be split and included in CD 6 to correct for malapportionment and for CD 6 to satisfy one of the *Gingles* preconditions. And those communities certainly need not be split to minimize Black voters' ability to impact elections in South Carolina.**

Moreover, the initial House proposal splits part of Richland County into CD 5 and the rest into CD 6, rather than dividing Richland County between CD 2 and CD 6, as under the benchmark Congressional map. Since, under the House's initial proposal, CD 5 is now a district anchored around population in the outskirts of Charlotte, North Carolina, no meaningful community of interest (for example, based on industry and media) exists between CD 5 and Richland County. *If* this body was respecting communities of interest, there are more indicia that parts of northern Richland should be paired with Lexington, with which Richland shares a school district, than with the suburbs of Charlotte. It also remains to be seen what rationale, *if* any, exists for extending CD 2 to bring in Fort Jackson, except for the perceived electoral self-interest desire of incumbent Rep. Wilson. But any incumbent's preferences must not be elevated above traditional redistricting principles such as maintaining communities of interest and diluting Black voting strength. Protecting communities of interest—in this case interest of Black voters in northwest Richland—is a far more significant redistricting consideration than an incumbent's personal preference.

Additionally, the House's initial proposal splits Berkeley County between CD 1 and CD 6, carving out historically Black areas on the East side of Berkeley County for inclusion in CD 6, while also ensuring that incumbent Nancy Mace's reported residence on Daniel Island remained in CD 1.^{xvii} **Similar to the serious problem with cracking Black voters in North Charleston and Charleston, the cohesive Black communities in Berkeley do not need to be split and some of them included in CD 6 to correct for malapportionment and for CD 6 to satisfy one of the *Gingles* preconditions. And those communities certainly do not need to be split to minimize Black voters' ability to impact elections in South Carolina.**

C. The House’s “Alternative” Congressional Redistricting Proposal

And then, last week, on December 22, 2021, the House posted a second, “alternative” Congressional map. Based on our preliminary analysis, this alternative Congressional map includes many of the same defects as the initial Senate proposal. *First*, the House’s alternative map reduces the BVAP in CD 6 to below a majority of the VAP, thus taking the district out of compliance with a *Gingles* precondition, as described above. Indeed, although Black voters make up 29% of South Carolina’s VAP, adopting the House’s alternative map would ensure that *none* of South Carolina’s seven Congressional districts would be home to a majority of Black voters. Outside of CD 6, the Senate’s proposed map also failed to ensure that Black voters are more than about 27% of the VAP in *any* other Congressional district. This is despite our warning in past testimony before the South Carolina Legislature that there is stark racially polarized voting in South Carolina elections based on our preliminary analyses and federal court findings.^{xviii} Thus, if Black voters are submerged in districts comprised of a majority of white voters, based on these voting patterns, there is indicia that Black voters’ voices will be diluted. Indeed, in past testimony, we provided findings that Black voters’ candidates of choice in the 2020 Senate election, as well as the 2018 Secretary of State and State Treasurer elections, were defeated despite Black voters’ overwhelming support for those candidates and because of little cross-over support for those candidates by white voters as the majority of the VAP.^{xix}

Significantly, like the Senate’s and House’s initial proposals, the House’s alternative proposal continues to fail by making CD 1 a politically non-competitive district for *any* voters. In addition, to dilute Black voting strength in CD 1 and other districts in and outside of CD 6, the alternative proposal makes largely the same cuts through Black communities in Richland County and in the City of Sumter as those decried in the Senate proposal. It continues to separate much of Charleston from North Charleston and appears to follow racial lines in its splits of Dorchester and Berkeley Counties. The splits in Charleston now locate the College of Charleston primarily in CD 1, rather than in CD 6. Under this plan, CD 6 also extends further into Dorchester, seemingly along a racial line; the historic town of Lincolnton, which has a significant BVAP and is located in Charleston, and Ladson, a census designated place, are kept with North Charleston but are placed in CD 6 rather than in CD 1; and Berkeley undergoes a similar apparently racially delineated split between CD 1

and CD 6. The House’s alternative proposal’s boundaries for CDs 3, 4, 5, and 7, indeed, are identical to those in the Senate’s proposed map.

Substantively, therefore, the House’s alternative Congressional proposal closely resembles the Senate’s much-criticized initial Congressional redistricting proposal.

Each of these defects in the House’s alternative plan raises serious concerns. Accordingly, we request answers to the following questions:

1. Having repeatedly asked this question, we once again ask whether this Committee has performed any analysis of racially polarized voting patterns in developing its maps? If so, will this Committee be publicizing the results of that analysis? And how is that analysis reflected in the Committee’s proposed maps?
2. Having repeatedly asked this question, we once again ask whether this Committee has considered whether each of these Congressional districts, particularly CD 1 and CD 6, will perform and function as effective districts for Black voters? If so, will this Committee be publicizing the results of that analysis? And how is that analysis reflected in the Committee’s proposed maps?
3. Having repeatedly asked this question, we once again ask whether this Committee’s has considered whether each of its proposed maps reflects consideration of communities of interest (“COIs”) particularly in the areas noted above where COIs appear to have been split?
4. Having repeatedly asked this question, we once again ask whether this Committee has considered South Carolina’s history of discrimination against Black voters? If so, how do the maps reflect an awareness of that history?

D. Revisit the South Carolina NAACP’s Proposed Maps to Ensure Non-Dilution of Black Voting Strength in South Carolina’s Congressional Maps

We urge you to revisit our coalition’s two proposed Congressional redistricting plans that we submitted on October 8, 2021.^{xx} As a reminder, both proposals (a) correct for the malapportionment that exists among all seven of South Carolina’s Congressional districts, particularly the severe population

disparities between CD 1 and CD 6 following the 2020 Census data results, while also (b) ensuring that Black South Carolinian voters have a voice in Congress and can meaningfully elect their preferred representatives and influence elections in more than just one of the seven Congressional seats.

Specifically, in our two proposed maps, CD 6 is comprised of a majority (more than 50%) of Black voters. This district—the only Congressional district in which Black South Carolinians have consistently enjoyed an equal opportunity to elect candidates of choice—was hard won. It also reflects a consideration of racially polarized voting patterns that, as we have shared with the House in oral and written testimony, continue to exist at the state and county level across South Carolina as found by federal courts and our coalition’s more recent analyses.

In addition, one of our proposed maps also aims to ensure that Black voters can have an impact and influence the outcome of elections outside of CD 6. In that proposed map, two other districts—CD 1 and CD 5—would have a BVAP of approximately 34% and 24%, respectively.^{xxi} The population distribution in this proposal would ensure that representatives and candidates in those districts could not ignore Black voters and constituents.

In our other proposed map, in addition to preserving CD 6 as a majority-Black district, we also aimed to ensure that CD 1 could be politically competitive for all voters, including Black voters. This was a goal shared by other proposed maps submitted to this body, including that by the SC League of Women Voters of South Carolina.

E. This Committee Must Ensure Transparency During the Redistricting Process

Finally, this Committee decided to impose an unreasonable timeline to introduce an alternative map to its constituents when most South Carolinians are prioritizing time with family and religious observance, raising serious accountability and transparency concerns. This Committee publicly released the House’s alternative map on Wednesday, December 22—two days before Christmas Eve—and scheduled a hearing for 10:00 a.m. on Wednesday, December 29.

In redrawing the lines for South Carolina’s seven-member Congressional delegation, this Committee is engaging in an undertaking that impacts all South

Carolínians. How districts are drawn affects every issue of concern on the federal level for Black South Carolínians in particular, including the need for COVID-19 protections, COVID-19 funding relief, moratoriums on evictions, access to housing, healthcare, infrastructure funding, police accountability, hate-crime protections, and jobs that pay fair wages, among other issues. The district lines this Committee draws will determine whether Black South Carolínians have a voice on these issues, and indeed whether Black voters’ “precious, almost sacred”^{xxii} right to vote is either undermined or protected.

Based on the timing of this Committee’s alternative Congressional map release, and indeed the timing of the one public hearing scheduled for this map, this Committee continues to lack transparency and a sincere commitment to engaging the public in the redistricting process.

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Thank you for the opportunity to provide this written testimony. As we continue to assess the Committee’s proposed maps and speak to community members, we may send you additional written comments to supplement this testimony. We look forward to hearing your answers to our questions.

ⁱ The South Carolina NAACP is state conference of 77 branches and over 13,000 NAACP members throughout South Carolina.

ⁱⁱ 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.

ⁱⁱⁱ See, e.g., May Green, *S.C. Proposed Congressional Map Draws Fire in Public Comments*, WRDW-TV (Nov. 29, 2021), <https://www.wrdw.com/2021/11/30/scs-proposed-congressional-map-draws-sharp-criticism-during-subcommittee-meeting/> (noting “unsparing” criticism of the Senate’s proposed Congressional redistricting plan from “every member of the public” who spoke at the Senate Subcommittee’s November 29, 2021 redistricting meeting).

^{iv} See Letter from South Carolina NAACP, et al., to the S.C. House of Representatives Jud. Comm.’s Redistricting Ad Hoc Comm., at 3 (Oct. 8, 2021),

<https://www.naacpldf.org/wp-content/uploads/Letter-to-H-Redistricting-Ad-Hoc-Comm-Submitting-Congressional-and-House-Maps-10-8-21.pdf>.

^v See S.C. Election Comm’n, *Official Results, 2020 Statewide General Election: U.S. House of Representatives, District 1* (June 30, 2021), <https://www.enr-scvotes.org/SC/106502/Web02-state.264691/#/cid/27002?undefined> (reporting that, in the 2020 general election for CD 1, the winning candidate’s margin of victory was approximately 1.3%, or less than 6,000 votes out of more than 400,000 votes cast); S.C. Election Comm’n, *Official Results, 2018 Statewide General Election: U.S. House of Representatives, District 1* (March 3, 2020), <https://www.enr-scvotes.org/SC/92124/Web02-state.222648/#/cid/27002> (reporting that, in the 2018 general election for CD 1, the winning candidate’s margin of victory was approximately 1.4%, or less than 4,000 votes out of nearly 300,000 votes cast).

^{vi} The Senate’s proposed map also split Black voters in Richland County between CD 2 and CD 6.

^{vii} See South Carolina NAACP, LDF, ACLU, and ACLU of South Carolina, Appendix 2 to Letter on October 8, 2021, <https://www.naacpldf.org/wp-content/uploads/Appendices-1-3-Previous-Correspondence-and-Proposed-Cong-and-House-Maps.pdf> (showing boundary lines and population statistics for two proposed Congressional plans, in which BVAP in CD 1 ranges from 24% to 34%).

^{viii} See, e.g., Testimony of Brenda Murphy, President, South Carolina NAACP, Before the S.C. Senate Jud. Redistricting Subcomm., at 4 (Nov. 12, 2021), <https://www.naacpldf.org/wp-content/uploads/Testimony-of-President-Brenda-Murphy-for-11-12-21-Senate-Hearing.pdf> (“However, our plans *do not* unnecessarily raise CD 6’s Black voting-age population beyond what our analysis showed to be appropriate. Therefore, our illustrative plans demonstrate that this Subcommittee does not need to—and, indeed, should not—take any action with respect to CD 6 that diminishes the electoral opportunities of Black voters in other districts.”); Testimony of Leah Aden, Deputy Director of Litigation, LDF, Before the S.C. Senate Jud. Redistricting Subcomm., at 3 (Nov. 12, 2021), <https://www.naacpldf.org/wp-content/uploads/Testimony-of-Leah-Aden-for-11-12-21-Senate-Hearing-Proposed-Congressional-Plans.pdf> (“You’ve heard this desire that Black voters’ voices be reflected in districts beyond CD 6 today not only from us, but also from the League of Women Voters of South Carolina and Stanford Law School’s Law and Policy Lab; and that request is reflected in their maps and others submitted to this body.”).

^{ix} S.C. Senate Jud. Redistricting Subcomm., *2021 Staff State Congressional Plan: Statistics* (last visited Dec. 28, 2021), <https://redistricting.scsenate.gov/docs/proposals/congressionalstaff/Staff%20Subcommittee%20Plan%20Stats.pdf>.

^x *Id.*

^{xi} South Carolina NAACP, et al., Appendix 2, *supra* note viii.

^{xii} *Id.*

^{xiii} *Id.*

^{xiv} See S.C. Leg. Video Archives, Nov. 29, 2021, Senate Jud. Redistricting Subcomm., at 26:28-31:20 (last visited Dec. 28, 2021), <https://www.scstatehouse.gov/video/archives.php> (click on link titled, “Monday, November 29, 2021, 10:30 am Senate Judiciary Committee -- Redistricting Subcommittee”).

^{xv} *Id.* at 30:45-33:14.

^{xvi} *Id.*

^{xvii} Bailey Wright, *Rep. Nancy Mace’s Home Vandalized with Graffiti*, ABC News 4 (June 1, 2021), <https://abcnews4.com/news/local/nancy-mace-home-vandalized-graffiti-south-carolina>.

^{xviii} See, e.g., Testimony of Brenda Murphy, President, South Carolina NAACP, Before the S.C. House of Representatives Jud. Comm.’s Redistricting Ad Hoc Comm, at 4, n.v (Nov. 10, 2021), <https://www.naacpldf.org/wp-content/uploads/Testimony-of-President-Brenda-Murphy-SC-NAACP-House-Redistricting-Hearing-on-11-10-21-final.pdf>; Testimony of Leah Aden, Deputy Director of Litigation, LDF, Before the S.C. Senate Jud. Redistricting Subcomm., at 4 (Nov. 10, 2021), <https://www.naacpldf.org/wp-content/uploads/Testimony-of-Leah-Aden-LDF-House-Redistricting-Hearing-on-11-10-21-final.pdf>.

^{xix} *Id.*

^{xx} October 8 Letter, *supra* note iv; Letter from LDF, et al., to S.C. House of Reps. Jud. Comm. Redistricting Ad Hoc Comm. (Sept. 27, 2021), https://www.naacpldf.org/wp-content/uploads/Follow-Up-Letter-to-SC-House-Redistricting-Ad-Hoc-Committee.9.27.2021_final.pdf.

^{xxi} The Black citizen voting-age populations (“BCVAP”) in CD 1 and CD 5 under this proposed plan would be 37% and 26%, respectively. And accounting for the 3% and 2% Latino CVAP in CD 1 and CD 5, respectively, the minority citizen voting-age population would be 40% in CD 1 and 28% in CD 5.

^{xxii} *Rep. John Lewis: ‘Your Vote is Precious, Almost Sacred’*, PBS NewsHour (Sept. 6, 2021), <https://www.pbs.org/newshour/show/rep-john-lewis-your-vote-is-precious-almost-sacred>.