

April 23, 2014

BY USPS & EMAIL

William B. Harvey III
Beaufort City Attorney
HARVEY & BATTEY, PA
1001 Craven Street
Post Office Drawer 1107
Beaufort, South Carolina 29901

Dear Mr. Harvey:

The NAACP Legal Defense and Educational Fund, Inc. (LDF)¹ writes this letter on behalf of the Burton-Dale-Beaufort Branch of the NAACP (Burton-Dale-Beaufort NAACP),² in response to letters dated March 10, 2014 and March 18, 2014 from you in your capacity as the Beaufort City Attorney. At the heart of both of your letters is the Beaufort City Council's request that we share with the City Council proposed redistricting maps for that body and accompanying demographic information for their review and consideration "before deciding whether to commit [the] issue [of changing the Council's electoral method] to referendum."³ As

¹ Since its founding in 1940, LDF has been a pioneer in the struggle to secure and protect the voting rights of Black people. LDF has been involved in nearly all of the precedent-setting litigation related to securing voting rights for people of color. *See, e.g., Shelby County, Alabama v. Holder*, 133 S.Ct. 2612 (2013) (LDF defending Section 5 of the Voting Rights Act). LDF also has successfully litigated numerous Section 2 of the Voting Rights Act cases against jurisdictions with discriminatory at-large electoral methods. *See, e.g., Georgia State Conference of the NAACP v. Fayette Cnty. Bd. of Comm'rs*, 950 F. Supp. 2d 1294, 1326 (N.D. Ga. 2013) (LDF, on summary judgment, securing a finding of a Section 2 of the Voting Rights Act violation in a challenge to the at-large electoral method to the county board of commissioners and board of education); *see also Georgia State Conference of the NAACP*, Civ. A. No. 3:11-CV-123-TCB, 2014 WL 617544, at *12 (N.D. Ga. February 18, 2014) (order requiring district voting for both boards as a remedy for the Section 2 violation). LDF has been a separate entity from the NAACP, and its state branches, since 1957.

² As mentioned in our previous letters to the Beaufort Mayor and other City Council Members, dated November 4, 2013 and February 19, 2014, the Burton-Dale-Beaufort NAACP's advocacy efforts seek to change the at-large electoral method for the Beaufort City Council because it, in combination with racially polarized voting in Beaufort, has prevented Black voters from electing candidates of their choice to that body.

³ In your March 10 and March 18, 2014 letters, the City Council has recognized that it is empowered to begin the process of adopting an alternative method of election that would ensure equal participation for all of Beaufort's residents. S.C. Code § 5-15-30 (2013) (acknowledging that the action of a majority of council can change the method of election to the council, followed by a referendum vote



you know, our objective, as articulated in our initial letter to the City Council, dated November 4, 2013, is to urge the City Council to initiate a change to its electoral method from at-large voting to district voting to ensure equal electoral opportunity for all of Beaufort's citizens and to comply with Section 2 of the Voting Rights Act and other applicable laws.⁴

In furtherance of that objective, and in the spirit of good faith cooperation, we provide further detail about the two variations of four-single member district plans, as well as a six single-member district plan, that we think can be drawn and further attach those plans and accompanying demographic information. As mentioned in our February 19, 2014 letter, each of these plans contains one district with a majority-Black voting-age population. Each also provides that the mayor-councilperson would continue to be elected at-large as under the existing electoral method and consistent with state law. Further, each of these available alternatives to Beaufort's existing at-large electoral method respects traditional redistricting principles, including compactness, contiguity, keeping communities of interest whole, and compliance with the Voting Rights Act.⁵

of a majority of registered city voters); *see generally* Municipal Association of South Carolina, *Forms and Powers of Municipal Government*, Aug. 2012, <http://www.masc.sc/SiteCollectionDocuments/Administration/Forms%20and%20Powers2.pdf>.

⁴ As expressed in our letters to the Beaufort City Council, our concern is that the existing at-large electoral method (and other potentially discriminatory enhancing factors like that the City Council members are elected to four year, staggered terms) for the five-member Beaufort City Council dilutes the voting strength of Beaufort's Black population (nearly 26 percent of the 12,361 total population), and denies Black voters in Beaufort of the opportunity to participate equally in the political process and elect their preferred candidates. Under the existing at-large electoral method, no Black candidate has been elected to office in the City of Beaufort in the last twenty years.

Looking at the totality of the circumstances, we also are concerned that the markedly lower educational attainment and socioeconomic reality of Black citizens in Beaufort, which is in stark contrast to that of its white citizens, together with at-large voting, dilutes the political strength of Beaufort Black voters.

⁵ We disagree with your contention in your December 11, 2013 and March 10, 2014 letters that single-member districts in Beaufort cannot satisfy the *Thornburg v. Gingles* preconditions for establishing a Section 2 claim, particularly that of contiguity (*i.e.*, electoral districts that are physically connected together). 478 U.S. 30, 50 (1986).

Indeed, waterways, such as the 4.8 square miles of the City's total 23.4 square miles that is water (18.6 square miles of the City is land) create a special case for contiguity in Beaufort. However, the reality of such natural boundaries in Beaufort is not atypical *or* an impediment to having contiguous districts. In fact, Beaufort City, within the Beaufort County's 11-member Council district plan, is split between five districts (*i.e.*, districts 1 through 5), with parts of Beaufort City (and other areas of the



Specifically, under the first variation of a four-single member district plan, Black voters would constitute 52.11 percent (and white, not-Hispanic voters 39.4 percent) of the voting-age population in district 1; incumbent (O'Kelley) would be in this district. Two incumbents (McFee and Beer)⁶ would be placed within district 2, and another incumbent (Sutton) and the mayor (Keyserling) would be placed in district 3 (though run for election at-large). District 4 would include no incumbents. *See* Attachments labeled Draft A.

Under the second variation of the four single-member district plan, Black voters would likewise constitute 52.11 percent (and white, not-Hispanic voters 39.4 percent) of the voting-age population in district 1; incumbent (O'Kelley) again would be in this district. Two incumbents (McFee and Beer)⁷ again would be placed within district 2, and another incumbent (Sutton) would be placed in district 3, with the mayor (Keyserling) placed in district 4 (though run for election at-large). *See* Attachments labeled Draft B.

Under the six single-member district plan, Black voters would constitute 52.57 percent (and white, not-Hispanic voters 39.57 percent) of the voting-age population in district 1; incumbent (Sutton) would be in this district. Three incumbents, including the mayor (McFee, Beer,⁸ and Keyserling), would be placed within district 2, and one incumbent (O'Kelley) would be placed in district 5. Districts 3, 4, and 6 would include no incumbents. *See* Attachments labeled Draft D.

County) separated by water. *See* Beaufort County Council Districts, Prepared by Beaufort Council GIS Division, <http://www.bcgov.net/departments/Administrative/beaufort-county-council/council-members/DistrictMaps/CouncilDistrictWebsiteMap.pdf>. *See also* Justin Levitt, *A Citizen's Guide to Redistricting*, Brennan Center for Justice at New York University School of Law, at 50 (2010) (discussing that districts divided by a waterway can be contiguous if a bridge runs across the water and other special cases where districts can be contiguous when natural boundaries like waterways are in play).

Accordingly, the alternative plans set forth for your consideration here strike the appropriate balance of respecting natural physical boundaries and waterways with ensuring equal electoral opportunity in Beaufort, as required by the Voting Rights Act and other applicable laws.

⁶ Since incumbents McFee and Beer live in the same census block, there is no way to avoid pairing them under any potential plan.

⁷ *Id.*

⁸ *Id.*



Please review, perhaps in consultation with your own demographer, the proposed redistricting plans that we share with you as possible alternatives to the current at-large method of election for the Beaufort City Council. Upon request, we also can provide your demographer with GIS shapefiles for the proposed plans. We welcome any questions that you may have about these proposed plans. To be clear, the options that we provide are by no means exhaustive as lawful electoral methods through which *all* voters in Beaufort will be afforded the opportunity to elect candidates of their choice and participate equally in the political process.

If, as you recommend in your March 18 letter, we ultimately need to jointly request that the South Carolina State demographer develop a legally acceptable redistricting plan, we are willing to revisit that option.

Finally, we are aware that Beaufort has continued to annex additional land parcels since the 2010 Census.⁹ We, therefore, request information on all such annexations and population annexed.

Please respond to this letter *in writing* by **Monday, May 19, 2014**. We look forward to continuing to dialogue amicably about possible solutions to our concerns with the City Council's at-large electoral method.

Sincerely,

A handwritten signature in black ink, appearing to read "Leah C. Aden".

Leah C. Aden
Assistant Counsel
Political Participation Group
NAACP Legal Defense and Educational Fund

Ryan P. Haygood
Director Political Participation Group
Political Participation Group
NAACP Legal Defense and Educational Fund

⁹ Beaufort-Port Royal, Metropolitan Planning Commission, Agenda, (Dec. 16, 2013) <http://media.islandpacket.com/smedia/2013/12/16/12/55/1u7AZp.So.9.pdf> (describing the annexing of three property parcels in Beaufort related to proposed zoning for the Boundary Street Redevelopment District).

Ltr. to Harvey, Beaufort City Attorney
April 23, 2014
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Enclosures

Cc (by email):

Billy Keyserling, Mayor
Donnie Ann Beer, Councilwoman
George H. O'Kelley, Jr., Councilman
Mike Sutton, Councilman
Mike McFee, Councilman

Scott Dadson, City Manager, Mayor & Council

Darryl T. Murphy, President, Burton-Dale-Beaufort Branch NAACP

Dwight James, Executive Director, South Carolina NAACP