

November 4, 2013

By email & USPS mail

Billy Keyserling
Mayor & City Council Member
City of Beaufort, South Carolina
Beaufort City Hall
1911 Boundary St.
Beaufort, South Carolina 29902
Attn: City Clerk

&

P.O. Box 2145
Beaufort, South Carolina 29901

Dear Mr. Keyserling:

The NAACP Legal Defense and Educational Fund, Inc. (LDF)¹ is writing to you at the urging of the Burton-Dale-Beaufort Branch of the NAACP (Burton-Dale-Beaufort NAACP).² At their request, LDF has been closely investigating with great interest the City of Beaufort's ("Beaufort") at-large method of electing its five city council members,³ of which you are one.⁴ Like the Burton-Dale-Beaufort NAACP, LDF has substantial

¹ Since its founding in 1940, LDF has been a pioneer in the struggle to secure and protect the voting rights of Black and other people of color. LDF has been involved in nearly all of the precedent-setting litigation relating to securing voting rights for people of color. Most recently, LDF defended Section 5 of the Voting Rights Act before the United States Supreme Court in *Shelby County, Alabama v. Holder*, 133 S.Ct. 2612 (2013). LDF uses legal, legislative, public education, and advocacy strategies to promote the full, equal, and active participation of Black people in America's democracy. LDF has been a separate entity from the NAACP, and its state branches, since 1957.

² The Burton-Dale-Beaufort NAACP considers the weakened voting strength of Beaufort's Black community due to the at-large electoral method to the city council, in combination with racially polarized voting, to be one of the most pressing issues facing that community. Accordingly, the Burton-Dale-Beaufort NAACP's advocacy efforts are squarely focused on changing the electoral method to that body.

³ S.C. Code Ann. § 5-15-20 (2013) (Methods of election of council; mayor elected at large; qualifications).

⁴ The list of current Beaufort city council members is available at *City Council: Council Members*, City of Beaufort, S.C., <http://www.cityofbeaufort.org/city-council.aspx> (last visited Oct. 31, 2013); *see also* S.C. Ann. Code § 5-5-10 (2013) (municipal governments in South Carolina



concerns that this particular method of election, under which no Black candidate has been elected to office in recent history, may violate Section 2 of the Voting Rights Act of 1965, as amended (“Section 2”),⁵ by denying voters of color in Beaufort the opportunity to elect candidates of their choice and participate equally in the political process. Fortunately, the city council is empowered to move swiftly to adopt an alternative method of election system⁶ that would ensure equal participation for all of Beaufort’s residents. We write to assist the city council in pursuing this inclusive, fair course of action, in order to avoid potentially costly⁷ and lengthy⁸ litigation⁹ that may be required given the facts at issue here to ensure compliance with the Voting Rights Act and other applicable laws.

Section 2 prohibits voting standards, practices, or procedures, including at-large methods of election, that were either enacted with racially discriminatory *intent*, or that

operate under one of three forms of government, including the council manager form, as in Beaufort); S.C. Code Ann. § 5-13-20 (Structure of council-manager form of government; election of council and mayor).

⁵ 42 U.S.C. § 1973(a) (2000 ed.).

⁶ Single-member districts are a common remedy to dilutive at-large voting schemes. *See, e.g., Citizens for Good Gov’t v. City of Quitman*, 148 F.3d 472, 476 (5th Cir. 1998).

⁷ *See, e.g.,* Brief for Avila et al. as *Amici Curiae* Supporting Respondents at 20, *Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612 (2013) (detailing the actions of Charleston County, South Carolina, which fought, unsuccessfully, to overturn a Section 2 liability finding concerning their at-large electoral system at the cost of *two million dollars* in public funds); *see also* Federal Judicial Center, *2003-2004 District Court Case-Weighting Study*, Table 1 (2005) (finding that voting cases consume the sixth most judicial resources out of sixty-three types of cases analyzed).

⁸ *See, e.g., 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).

⁹ LDF has successfully litigated numerous Section 2 cases against jurisdictions with discriminatory at-large electoral methods including, but not limited to: *Georgia State Conference of the NAACP, et al. v. Fayette Cnty. Bd. of Comm’rs, et al.*, Civ. A. No. 3:11-CV-123-TCB, 2013 WL 2948147 (N.D. Ga. May 21, 2013) (a challenge to the at-large electoral method to the county board of commissioners and board of education); *Dillard v. Town of N. Johns*, 717 F. Supp. 1471 (M.D. Ala. 1989) (a challenge to the town’s at-large method of election to its council); *Dillard v. Baldwin Cnty. Bd. of Educ.*, 686 F. Supp. 1459 (M.D. Ala. 1988) (a challenge to the at-large system to elect the county’s board of education); *Dillard v. Crenshaw Cnty.*, 640 F.Supp. 1347 (M.D. Ala. 1986); 649 F.Supp. 289 (M.D. Ala. 1986), *aff’d in part and remanded in-part for reconsideration*, 831 F.2d 246 (11th Cir. 1987), *reaff’d on remand*, 679 F.Supp. 1546 (M.D. Ala. 1988) (a challenge to at-large schemes to elect county commissioners in nine counties that grew to include 183 cities, counties, and county school boards using at-large systems; 176 ultimately settled); *McMillan v. Escambia Cnty., Fla.*, 748 F.2d 1037 (former 5th Cir. 1984) (a challenge to the at-large electoral method to county commissioners).



have racially discriminatory *results*.¹⁰ One of the chief purposes of Section 2 is to prohibit “minority vote dilution,”¹¹ which occurs where, as may be the case here, an at-large electoral system denies Black voters the opportunity to participate equally in the political process and elect their preferred candidates because their votes are canceled out by the white majority who vote as a bloc.¹²

Although Beaufort’s population is nearly (26 percent) Black¹³ of its 12,361 total population,¹⁴ there are currently no Black members on the five-member city council.¹⁵ Indeed, no Black person has been elected to the city council in recent history, even as Black voters have cast their ballots for Black candidates,¹⁶ and Black voters have vocally advocated for electoral change.¹⁷

¹⁰ 42 U.S.C. § 1973(a). Section 2, as amended, requires consideration of both discriminatory intent and effect, as it prohibits practices “imposed or applied . . . in a manner which results in a denial or abridgment . . . of the right to vote on account of race . . .”

¹¹ See *Thornburg v. Gingles*, 478 U.S. 30 (1986).

¹² In addition to the potentially discriminatory nature of the at-large electoral method, other voting practices, like that Beaufort city council members are elected to four year, staggered terms, see S.C. Code Ann. § 5-15-40 (2013), likely enhance the discrimination that Beaufort’s Black citizens experience because of at-large voting. See, e.g., *Jackson v. Edgefield Cnty., S.C. Sch. Dist.*, 650 F. Supp. 1176, 1202 (D.S.C. 1986) (in finding at-large method of electing school board trustees violated Section 2, the court recognized that “[a] vote dilution case may be strengthened by a showing of the existence of the ‘enhancing factors,’ which include staggered terms, district residency, majority vote requirement, anti-single shot provisions, and an unusually large election district.”); see also *City of Lockhart v. United States*, 460 U.S. 125, 135 (1983) (“[t]he use of staggered terms also may have a discriminatory effect under some circumstances, since it . . . might reduce the opportunity for single-shot voting or tend to highlight individual races.”); *City of Rome v. U. S.*, 446 U.S. 156, 183 (1980) (same).

¹³ According to 2010 Census estimates, Beaufort’s African American population is 25.7% of the total population. *2010 City of Beaufort, South Carolina Demographical Data*, U.S. Census Bureau, available at <http://quickfacts.census.gov/qfd/states/45/4504690.html> (last visited Oct. 31, 2013).

¹⁴ *Id.*

¹⁵ See *supra* note 4, list of current Beaufort city council members, available at *City Council: Council Members*, City of Beaufort, S.C., <http://www.cityofbeaufort.org/city-council.aspx> (last visited Oct. 31, 2013).

¹⁶ For example, Larry Holman ran unsuccessfully for a city council seat in 2010, receiving 22 percent of the votes cast. *City of Beaufort Special Election Results*, Beaufort Cnty. Bd. of Elections & Registration (July 19, 2011), available at http://www.bcgov.net/departments/community-services/voter-registration-and-elections/documents/July%2019_Official.pdf.

Even still, courts have recognized that Black candidates may not run in election after election *because of* the discriminatory voting system. See, e.g., *McMillan*, 748 F.2d at 1045 (“[T]he lack of black candidates is a likely result of a racially discriminatory system,” in response



All the while, this city council has been making important decisions impacting the Black community related, but not limited to, the city budget, spending and programming, contracts, permits, appointing judges, adopting and enforcing health and safety codes, zoning and land use regulations, licensing, ordinances, resolutions and regulations, and hiring or terminating workers.¹⁸ As this board is well aware, the decisions of local governments, such as Beaufort's city council, have enormous affect on the lives Black and other people of color. That such critical decisions are made without the direct and involved participation from Beaufort's Black community is alarming. Precisely because they have all too often operated as structural walls of exclusion to exercising the one fundamental right that is "preservative of all rights,"¹⁹ at-large electoral systems in jurisdictions with significant populations of people of color, as in Beaufort, have been struck down as violations of Section 2.²⁰

This city council has the opportunity to be a more inclusive body. South Carolina state law expressly empowers city councils, like Beaufort's, to *initiate* the process to alter

to defendants claim that no black candidate ran for the commission between 1970 and 1977 when plaintiffs filed suit); *see also U.S. v. Marengo, Cnty. Comm'n*, 731 F.2d 1546, 1568–69 (former 5th Cir. 1984) (same).

¹⁷ *See, e.g., Larry Holman Questionnaire*, The Island Packet (July 11, 2011), <http://www.islandpacket.com/2011/07/11/1722098/larry-holman-questionnaire.html> ("City Council elections should change from the at-large system to single-member/hybrid districts to promote greater accountability and fairer representation for all Beaufort residents.").

¹⁸ In addition to those specific powers conferred to municipal councils, *see, e.g.,* S.C. Code Ann. § 5-13-30 (2013) (Powers and duties of municipal council), South Carolina municipalities have a wide range of general powers. *See, e.g.,* Jon B. Pierce & Edwin C. Thomas, *General Purpose Local Government in South Carolina: Prepared for the Local Government Funding System Reform Project*, at 17-18, <http://www.ipspr.sc.edu/grs/LGRP/DOC/LGFP%20Gen.%20Purpose%20Local%20Government.pdf>.

¹⁹ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

²⁰ *See, e.g., Fayette Cnty. Bd. et al.*, No. 3:11-cv-123-TCB, 2013 WL 2948147, at *5 (noting that only 20 out of 180 school districts in Georgia elect – at this point in time – all school board members on an at-large basis); Karen M. Kedrowski, et al., *Desegregation, Descriptive Representation, & Electoral Structures: A Study of South Carolina Public School Districts*, 7 (Jan. 2005), <http://www.politicalscience.uncc.edu/godwink/PPOL8602/godwin-desegregation.pdf>, (only 24 out of 86 South Carolina school districts, as of 2005, elect school board members at-large). In South Carolina, many other jurisdictions currently function with other methods of election. *See, e.g.,* Charleston (single-member), Charleston, S.C. Code § 11-2 (1979); Ord. No. 2000-212, § 1, 8-15-00, and Hilton Head Island (single-member), Hilton Head Island, S.C. Code § 3-1-10 (1991); Ord. No. 91-3, § 2, 5-20-91.



its electoral method through a simple majority vote.²¹ We urge the city council, under your leadership, to take that action of initiating a change to its electoral method expeditiously for the benefit of all of Beaufort's citizens and to comply with Section 2 and other applicable laws and avoid litigation.

We welcome the opportunity to work with you to resolve this important matter amicably. Please respond to this letter *in writing* by **November 29, 2013**. Please feel free to reach out to us directly with any questions.

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
NAACP Legal Defense and Educational Fund

cc: Donnie Ann Beer, Councilwoman (by email & USPS mail)
George H. O'Kelley, Jr., Councilman (by email & USPS mail)
Mike McFee, Councilman (by email & USPS mail)
Mike Sutton, Councilman (by email & USPS mail)

Daryl Murphy, President, Burton-Dale-Beaufort Branch of the NAACP (by email)

Dwight James, Executive Director, South Carolina NAACP (by email)

²¹ 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 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>.