February 2, 2022

Sent via email

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Re: Post-2020 Redistricting Process in Georgetown County

Dear Georgetown County Council Members:

The NAACP Legal Defense and Educational Fund, Inc. ("LDF"), the South Carolina State Conference of the NAACP, and the ACLU of South Carolina are nonprofit, nonpartisan civil rights and racial justice organizations that aim to ensure the adoption of fair and nondiscriminatory redistricting plans at every level of government. We are closely following the redistricting cycle in South Carolina, including in Georgetown County. We encourage the Georgetown County Council ("County Council") to create meaningful opportunities to ensure that all residents' voices are heard and meaningfully included at all stages of the redistricting process, and we are available to serve as a resource.

We write to notify you that, based on a preliminary analysis of the County Council's redistricting plans, we believe that the 509 plan currently being considered by the County Council unnecessarily packs Black voters into Districts 3 and 7 while reducing the Black voting population of District 4. Both stratagems—the packing and cracking—will harm Black voters in Georgetown County by diluting their voting power and risking, if not eliminating, their ability to elect their preferred candidates. As such, the County's proposed plan is likely to violate Section 2 of the Voting Rights Act ("VRA"). As we detail below, County Council maps must preserve VRA-compliant districts that remain necessary and effective for Black voters in Georgetown County to elect candidates of their choice. The alternative plan submitted by the Georgetown Branch of the NAACP achieves those objectives. Specifically, the alternative map previously submitted by the Georgetown Branch of the NAACP preserves Districts 3, 4 and 7 as VRA-compliant districts by maintaining Black voting populations above 50% in *each* of those districts. This is necessary in light of the voting patterns and other circumstances in Georgetown County.

Compliance with the Voting Rights Act

To ensure that racial minority voters have equality of opportunity to elect their preferred candidates, Section 2 of the VRA prohibits states and localities from drawing electoral lines with the purpose or effect of diluting the voting strength of voters of color. That is, the VRA requires that voters of color be given equal opportunities to elect representatives of their choice—not only for state-level representative bodies, but also for city and county councils, school boards, and other elected local bodies.

The U.S. Supreme Court has established the following three so-called *Gingles* preconditions for evaluating vote dilution under Section 2: whether (1) an illustrative districting plan can be drawn that includes a district in which the minority community is sufficiently large and geographically compact to constitute a majority in a single-member district ("majority-minority district"); (2) the minority group is politically cohesive in its support for its preferred candidates; and (3) in the absence of majority-minority districts, candidates preferred by the minority group would usually be defeated due to the political cohesion of non-minority voters in support of different candidates.[1] After a plaintiff establishes the three *Gingles* preconditions, a "totality of circumstances" analysis is conducted to determine whether minority voters "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."[2]

Section 2 prohibits minority vote dilution whether or not a plan was adopted with a discriminatory purpose.[3] What matters under Section 2 is the *effect* of the redistricting plan on the opportunity of voters of color to elect candidates of their choice.

The VRA also requires an assessment of whether there is racially polarized voting ("RPV").[4] RPV occurs when different racial groups vote for different candidates. In a racially polarized election, Black people vote together for their preferred (usually Black) candidate, and most white voters vote for the opposing (usually white) candidate. This is the key consideration when determining whether racial vote dilution is occurring.[5] Districts comprised of a majority of Black voters provide an opportunity to elect preferred candidates in the presence of RPV.

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1 *Id.* at 50–51.

2 52 U.S.C. § 10301(b); *see also LULAC*, 548 U.S. at 425. Courts examine the "totality of the circumstances" based on the so-called Senate Factors, named for the Senate Report accompanying the 1982 Voting Rights Act amendments in which they were first laid out. *Gingles*, 478 U.S. at 43–45. 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 the Parish 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 discrimination in areas of life like education, housing, and economic opportunity; (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 the needs of Black residents; and (9) whether the policy underlying the voting plan 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.

3 *Gingles*, 478 U.S. at 35.

4 *Gingles*, 478 U.S. at 48 n.15; *see also Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994) (explaining that RPV increases the potential for discrimination in redistricting, because "manipulation of district lines can dilute the voting strength of politically cohesive minority group members").

5 *N. Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204, 221 (4th Cir. 2016) (noting that racially polarized voting is "[o]ne of the critical background facts of which a court must take notice" in Section 2 cases); *Collins v. City of Norfolk, Va.*, 816 F.2d 932, 936–38 (4th Cir. 1987) (emphasizing that RPV is a

As a general matter, RPV continues to exist in various elections in South Carolina,[6] including in Georgetown County elections. At the state level, for example, according to our analysis of the 2020 election for U.S. Senate, Jaime Harrison, the candidate of choice of Black voters across South Carolina, received only 25% of white voter support, and he was defeated despite receiving 98% of Black voter support. In Georgetown County, Mr. Harrison received only 24% of white voter support, while he received 93% of Black voter support. These patterns at the state and county level are not limited to the 2020 U.S. Senate election. Similar patterns at the state and county level have existed in elections featuring Black-preferred candidates in other key races, such as in 2018 elections for the Secretary of State and State Treasurer.[7]

As it develops its redistricting plan, the County Council must comply with Section 2 of the VRA and ensure that any maps it adopts comply with the VRA's "nationwide ban on racial discrimination in voting."[8] The VRA requires that, under the totality of circumstances, racial minority voters, such as Black Georgetown County voters, have an equal opportunity to participate in the electoral process and elect representatives of their choice.[9] Section 2 therefore requires the County Council, under certain circumstances, to draw districts that provide minority voters with an effective opportunity to elect their preferred candidates ("effective minority opportunity districts"). Section 2 also requires the County Council to preserve VRA-compliant districts that remain necessary and effective for Black voters in Georgetown County to elect candidates of their choice. As such, a County Council map may violate Section 2 when it dilutes the voting power of voters of color, including by "packing" Black voters into districts with unnecessarily high Black populations. A map may also violate Section 2 if it "cracks" Black voters

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"cardinal factor[]" that "weigh[s] very heavily" in determining whether redistricting plans violate Section 2 by denying Black voters equal access to the political process).

[6] *See*, *e.g.*, *Colleton Cty. Council*, 201 F. Supp. 2d at 643 ("Voting in South Carolina continues to be racially polarized to a very high degree . . . in all regions of the state and in both primary elections and general elections."); *see also, e.g.*, *United States v. Charleston Cty., S.C.*, 365 F.3d 341, 350 (4th Cir. 2004) (county voting "is severely and characteristically polarized along racial lines"); *Jackson v. Edgefield Cty., S.C. Sch. Dist*., 650 F. Supp. 1176, 1196 (D.S.C. 1986) (observing that "the outcome of each [election] could be statistically predicted and reasonably explained by the race of the voters"); *id.* at 1198 ("The tenacious strength of white bloc voting usually is sufficient to overcome an electoral coalition of black votes and white 'crossover' votes.").

[7] For example, in the 2018 election for Secretary of State, Melvin Whittenburg, the candidate of choice of Black voters across South Carolina, received only 23% of white voter support and was defeated, despite receiving 95% of Black voter support. In Georgetown County, Mr. Whittenburg received 95% of Black voter support and only 21% of white voter support. As another example, in the 2018 election for State Treasurer, Rosalyn Glenn, the candidate of choice of Black votes across South Carolina, received only 21% of white voter support and was defeated, despite receiving 95% of Black voter support. In Georgetown County, Ms. Glenn received 94% of Black voter support and only 19% of white voter support.

[8] *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 557 (2013); 52 U.S.C. § 10301(a) ("No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied . . . in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . . .").

[9] 52 U.S.C. § 10301(b); *Colleton Cty. Council v. McConnell*, 201 F. Supp. 2d 618, 632 (D.S.C. 2002) (quoting *Gingles,* 478 U.S. at 47 (1986)) ("[Section] 2 prohibits the implementation of an electoral law that 'interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.'"); *see also LULAC v. Perry*, 548 U.S. 399, 425 (2006) (describing the operation of the "totality of the circumstances" standard in the vote-dilution claims).

into districts with populations insufficient to give Black voters an opportunity to elect their preferred candidates. A map may also violate Section 2 if it mechanically employs demographic thresholds.[10]

Moreover, to comply with Section 2, the County Council must conduct a nuanced and "an intensely local appraisal" of the "totality of the circumstances" under a "functional view of the political process."[11] This requires attention not only to the demographic composition of districts, but also to other factors including "participation rates and the degree of cohesion and crossover voting."[12] Sometimes, such effective minority opportunity districts will be single-member districts comprised of a majority (more than 50%) of Black voters ("majority-minority" districts).

With these requirements in mind, we have conducted a preliminary analysis of the County Council's redistricting plans. We have reviewed

- 2020 Census data, including racial demographic data;
- recent statewide and county-level voting patterns, including RPV patterns;
- how past and newly proposed districts may perform for voters;
- communities of interest and other redistricting principles like contiguity, compactness, and any incumbent protection; and,
- incorporation of community members' feedback.

Based on this analysis and available information, County Council maps must preserve majority minority districts because they remain necessary and effective for Black voters in Georgetown County to elect candidates of their choice in the presence of RPV and the totality of circumstances. The Black voting population in effective districts, like Council Districts 3, 4, and 7, must not be diluted by "packing" Black voters into districts with unnecessarily high Black populations or by "cracking" them into districts with populations that are insufficient to afford Black voters an opportunity to elect their preferred candidates. Diluting the Black voting population in District 4 (by significantly reducing its Black voting population by 18 %—from 58% to 40.1%) while inappropriately "packing" the Black voting population in Districts 3 and 7 is likely to render District 4 ineffective for Black voters based on an analysis of RPV and other conditions in Georgetown.

As the County Council has seen—and will continue to see, in hearing necessary additional testimony by community members—preserving the ability of Black voters to participate politically

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[10] *Ala. Leg. Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015); *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 802 (2017) (finding 12 districts were unconstitutional racial gerrymanders because the legislature decided to make them all meet a 55% BVAP target for which there was no strong basis in evidence).

[11] *Gingles*, 478 U.S. at 45 (internal quotation marks and citation omitted).

[12] Bernard Grofman, Lisa Handley, David Lublin, *Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence*, 79 N.C. L. Rev. 1383, 1415 (2001); *see also id.* at 1415–16 ("South Carolina is a particularly useful state in which to examine participation rates by race as the state actually collects this data—there is no need to estimate black and white registration or turnout rates.").

and elect candidates of choice in Georgetown elections is a paramount concern for your constituents.

Thus, **we ask that you consider alternatives to the current proposed map that preserve Districts 3, 4 and 7 as VRA-compliant districts by maintaining Black voting populations above 50% in each of them**. The proposed map submitted by the Georgetown Branch of the NAACP demonstrates that it is possible to maintain all three districts (Districts 3, 4, and 7) as majority-Black districts to provide Black voters with an opportunity to elect candidates of their choice. The NAACP map does this while adhering to traditional redistricting principals—such as minimizing the splitting of communities of interest and keeping districts contiguous—and satisfying the requirements of the 14th Amendment of the U.S. Constitution.

Failure to comply with Section 2's requirements during this redistricting cycle would expose Georgetown County to costly (in time and money) litigation.[13] For example, in the 2000 redistricting cycle, lawmakers in Charleston County spent $2 million unsuccessfully defending against a Section 2 claim.[14] After losing the lawsuit, the County paid an additional $712,027 in plaintiffs' attorneys' fees and costs.[15] Other localities have amassed substantial legal fees, which are paid with public funds, defending Section 2 claims.[16] Moreover, as you are no doubt aware, in 2008 the Georgetown School trustees settled a Section 2 challenge.[17] Without conceding liability, the school district "acknowledge[d] that there is a strong likelihood that Plaintiff would prevail… [at] trial."[18] The settlement resulted in a nine-person board where seven members are elected to single-member districts using the County Council district lines as the school board district lines and where two members are elected at-large.[19]

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[13] *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation*, (Sept. 2021), LDF, https://www.naacpldf.org/wp-content/uploads/Section-2-costs-9.19.21-Final.pdf.

[14] Order Granting Attorneys' Fees, *Moultrie v. Charleston Cty.*, No. 2:01-cv-00562-PMD (D.S.C. Aug. 8, 2005).

[15] Congressional Authority to Protect Voting Rights After *Shelby County v. Holder*: Hearing Before the Subcomm. on the Constitution, Civil Rights and Civil Liberties of the H. Comm. on Judiciary, 116th Cong. 14 (Sept. 24, 2019) (Written Testimony of Professor Justin Levitt) (citing Amended Judgment, *Moultrie v. Charleston Cty.*, No. 2:01-0562 (D.S.C. Aug. 9, 2005)).

[16] In Fayette County, Georgia, the Board of Commissioners, and the Board of Education spent over $1.11 million of taxpayers' dollars on legal fees defending a Section 2 claim challenging the County's at-large voting scheme, which discriminated against voters of color. Tammy Joyner, *Fayette's voting fight proves costly,* ATLANTA JOURNAL-CONSTITUTION (Oct. 20, 2015), https://www.ajc.com/news/local-govt--politics/fayette-voting-fight-proves-costly/JBKp4T7SwLma2gWQJFfpBO/.

Similarly, in Sumter County, Georgia, after the Board of Education lost a Section 2 challenge to its at-large voting scheme, plaintiffs sought $990,576.09 for attorneys' fees and costs. Plaintiffs' Motion for Attorneys' Fees and Expenses, *Wright v. Sumter County Board of Elections*, No. 1:14-00042-WLS (N.D. Ga. Apr. 22, 2020). The district court ordered the Board to pay plaintiffs $786,929.98. Judgment, *Wright,* No. 1:14- 00042-WLS (N.D. Ga. Dec. 7, 2020). However, the parties jointly moved to vacate and settled outside of court. Joint Motion to Vacate Order, *Wright*, No. 1:14- 00042-WLS (N.D. Ga. Dec. 21, 2020).

[17] *See* Consent Judgement and Decree, *United States v. Georgetown Cty. Sch. Dist.,No*. 2:08-CV-00889-DCN (D.S.C. 2008).

[18] *Id.* at 3.

[19] *Id.* at 5.

In sharing the information outlined above, we endeavor to ensure that all voters have access to representation, and that Black voting power is not diluted during the redistricting process in Georgetown County. Any dilutive redistricting plan that deprives Black voters of the opportunity to elect their preferred candidates has a direct impact on Black voters' access to representatives who will be responsive to the needs of their communities within the County. For ten years or more, how the County Council district lines are drawn will determine whether Black community members in Georgetown County have a voice and representation on issues impacting them, including, among other issues, redevelopment opportunities, access to affordable housing, availability of job-training programs, and adequate infrastructure, like roads and sidewalks. Black community members need representatives who are responsive to these and other needs of Black communities and voters.

We thank you for your consideration. Please feel free to contact Adair Boroughs at Adair@BoroughsBryant.com or 803-200-2743 with any questions or to discuss the requests or anything else within the letter in more detail. We look forward to hearing from you soon and working together for the people of Georgetown County.

Sincerely,
s/ *Adair F. Boroughs*
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LDF

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. 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.

South Carolina NAACP

The South Carolina NAACP is a state conference of branches of the National Association for the Advancement of Colored People ("NAACP"), a national civil rights organization. The South Carolina NAACP was chartered in 1939 and is the oldest civil rights group in South Carolina. The South Carolina NAACP, on behalf of its members and the other constituents it serves, seeks to remove all barriers of racial discrimination through democratic processes and the enactment and enforcement of federal, state, and local laws securing civil rights, including laws relating to voting rights

ACLU of South Carolina

The ACLU of South Carolina is a not-for-profit and non-partisan organization that is an affiliate of the ACLU. The ACLU of South Carolina works towards its mission by advocating for all South Carolinians to have equal access to opportunities and the equal ability to participate in government decision that affect them.