

July 5, 2022

Sent via email to:

Prattville City Council
Bill Gillespie Jr., Mayor
Prattville City Hall
101 West Main Street
Prattville, Alabama 36067
Bill.Gillespie@prattvilleal.gov

Dear Mayor Gillespie and Members of the Prattville City Council:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”)¹, the Elmore County Branch of the NAACP, the Elmore County Civic Improvement League, the American Civil Liberties Union (“ACLU”) of Alabama, and Lift Our Vote write to convey our concerns regarding (1) Prattville City Council’s proposed redistricting map (hereinafter also referred to as “Draft Map 2-25”) for the post-2020 census redistricting cycle and (2) whether city council has created meaningful opportunities to ensure that all Prattville residents have an opportunity to participate in the redistricting process.

In the last decade, Prattville has seen both an overall population growth and an increase in racial and ethnic diversity. The Black voting-age population now makes up 20.7% of the city’s population, compared to 15.7 % in 2010.² It is deeply concerning that under the proposed redistricting plan, Prattville will go from having one out of the seven districts where Black residents form the majority voting-age population, to zero. Given the city’s changing demographics and other circumstances discussed below, this plan likely violates Section 2 of the Voting Rights Act of 1965 (“Section 2”) because it fails to provide Black voters with a meaningful opportunity to

¹ Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in political participation, education, economic justice, 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.

² U.S. Census Bureau, Prattville, Alabama, 2020 Redistricting Data, <https://data.census.gov/cedsci/table?q=prattville&tid=DECENNIALPL2020.P1>, U.S. Census Bureau; <https://data.census.gov/cedsci/table?q=prattville&tid=DECENNIALPL2020.P1>; U.S. Census Bureau, Prattville, Alabama, 2010 Redistricting Data, <https://data.census.gov/cedsci/table?q=prattville&tid=DECENNIALPL2010.P1>.

elect a candidate of their choice. By proposing to take away the only district that currently provides an opportunity for Black voters to elect their preferred candidates, in the face of the demographic, voting, and other life circumstances of Black people in Prattville, the council's actions are also suggestive of intentional discrimination.³

For the reasons discussed below, we urge City Council to implement the following requests:

1. Revisit its proposal and consider and analyze whether Section 2 of the Voting Rights Act requires a redistricting plan that contains at least one district where Black voters form a majority of the voting-age population, including by determining whether it can develop a hypothetical majority-Black district that respects traditional redistricting principles and whether there is racial bloc voting in the City, among other considerations;
2. Delay a vote on the current proposed map; and
3. Moving forward, make a concerted effort to ensure that the community is meaningfully included at all stages of the redistricting process.

I. Prattville City Council Must Comply with Section 2 of the Voting Rights Act in Redistricting.

Prattville has an affirmative obligation to adopt a map that complies with Section 2 of the VRA. Section 2 requires the city to ensure that voters of color have an equal opportunity “to participate in the political process and elect candidates of their choice,” taking into consideration local demographics, voting patterns, history, and other circumstances.⁴ If adopted, Draft Map 2-25 will eliminate the only majority-minority district that currently exists and thus dilute Black voting power, in likely violation of Section 2.

A redistricting plan may violate Section 2 by, for example, “packing” or “cracking” voters of color. Packing occurs where voters of color are placed in a district where they are an inappropriately *high* proportion of the population with the result that they exercise less political influence in other districts. Cracking involves placing voters of color into multiple districts where they are an inappropriately *low* proportion of the population with the result that they are unable to influence the political process in any district. Both of these stratagems, in the presence of racial bloc voting and other circumstances, potentially dilute the voting power of minority citizens to elect their preferred candidates. Additionally, packing

³ See *Arlington Heights v. Metropolitan Housing Development Corporation*, 429 US 252, 266-67 (1977).

⁴ *Thornburg v. Gingles*, 478 U.S. 30, 34 (1986).

or cracking undertaken for intentionally discriminatory reasons violates the U.S. Constitution as well as the Voting Rights Act.⁵

In the 1986 case of *Thornburg v. Gingles*, the U.S. Supreme Court established three preconditions indicating that a districting plan may result in vote dilution, in violation of Section 2. These “*Gingles* preconditions” are met when: (1) an alternative districting plan can be drawn that includes one or more single-member districts where a minority community is sufficiently large and geographically compact to make up the mathematical majority of the district; (2) the minority group is politically cohesive in support for its preferred candidates; and (3) in the absence of majority-minority districts, candidates preferred by the minority group would usually be defeated because of bloc voting by the white majority in support of different candidates.⁶ Together, the second and third *Gingles* preconditions are often referred to as racial bloc voting or racially polarized voting.⁷ Racially polarized voting is the heart of a Section 2 vote dilution claim.⁸

After a plaintiff establishes the three *Gingles* preconditions, courts then evaluate the “totality of circumstances” 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.”⁹ Courts consider several

⁵ *Arlington Heights*, 429 U.S. at 266. Cf. *Flowers v. Mississippi*, 139 S. Ct. 2228, 2243 (2019) (relying on disparate impact, historical discrimination, and the tenuousness of a state’s justifications to find discrimination); *Foster v. Chatman*, 136 S. Ct. 1737, 1755 (2016) (same).

⁶ *Gingles*, 478 U.S. at 50-51.

⁷ Racially polarized voting occurs when different racial groups vote as a bloc for different candidates. In a racially polarized election, for example, most voters of color may vote together for their preferred candidate (frequently, though not always, a candidate of color), while most white voters vote for the opposing candidate (frequently, though not always, a white candidate).

⁸ *City of Carrollton Branch of the NAACP v. Stallings*, 829 F.2d 1547, 1550 (11th Cir. 1987) (“[R]acial bloc voting is the hallmark of a vote dilution claim.”); *United States v. Marengo Cty. Comm’n*, 731 F.2d 1546, 1566 (11th Cir. 1984) (holding that the racially polarized voting “will ordinarily be the keystone of a dilution case”); see also *Gingles*, 478 U.S. at 55 (“racial bloc voting is a key element of a vote dilution claim”).

⁹ 52 U.S.C. § 10301(b); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 425 (2006).

factors—such as the jurisdiction’s history of discrimination in voting—to determine whether the minority vote has been impermissibly diluted.¹⁰ As the Eleventh Circuit

has explained, in cases where the *Gingles* preconditions are satisfied, Section 2 liability generally follows—“it will be only the very unusual case in which a plaintiff can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances.”¹¹

II. A New City Council Map That Eliminates the Only Majority-Minority District Raises Grave Concerns under Section 2 of the Voting Rights Act.

Compliance with the Voting Rights Act is a nuanced, fact-specific inquiry that requires an “intensely local appraisal” based “upon the facts of each case.”¹² In addition to complying with the Constitution’s “One Person, One Vote” mandate¹³, the city must ensure that Black voters have an equal opportunity to elect candidates of their choice, as required by Section 2, while also complying with state redistricting principles such as considering communities of interest, and providing compact and contiguous districts. We are concerned that Prattville’s proposed redistricting plan dilutes Black voting strength and by moving Black voters out of District 2, reflects an intent to minimize Black voting power.¹⁴

¹⁰ Courts examine the “totality of the circumstances” based on the so-called “Senate Factors,” named for the Senate Judiciary Committee Report accompanying the 1982 Voting Rights Act amendments where the relevant factors 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 state or political subdivision uses voting practices that may enhance the opportunity for discrimination; (4) whether minority candidates have access to candidate slating processes; (5) the extent to which minority 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 minority people have been elected to public office; (8) whether elected officials are responsive to the needs of minority 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.

¹¹ *Wright v. Sumter Cty. Bd. of Elections & Registration*, 979 F.3d 1282, 1304 (11th Cir. 2020) (quoting *Georgia State Conf. of NAACP v. Fayette Cty. Bd. of Comm’rs*, 775 F.3d 1336, 1342 (11th Cir. 2015)) (internal quotation marks omitted).

¹² *Gingles*, 478 U.S. at 79.

¹³ *Reynolds v. Sims*, 377 U.S. 533, 565–68 (1964); *id.* at 558 (quoting *Gray v. Sanders*, 372 U.S. 368, 381 (1963)) (“The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.”); see U.S. Const. amend. XIV, § 1 (“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”).

¹⁴ See *supra* note 5.

In 1988, Willie L. Wood Jr. became the first Black person to hold office in Prattville when he was elected as District 2's city councilman.¹⁵ Since then, District 2 has consistently elected a Black-preferred candidate who also has been a Black person.¹⁶ The other six districts are districts comprised of a majority of white voters and consistently elect white voters' preferred candidates who also are white people. And based on our preliminary analysis of voting patterns, the white incumbents in the majority-white districts outside of District 2 do not appear to be the candidates of choice for Black voters in Prattville.

While the 2020 Census data shows that from 2010 to 2020, Prattville's Black voting-age population increased, the proposed plan *reduces* District 2's Black population.¹⁷ Per information reflected in city council minutes, under the existing 2010 map, Black residents make up 47.3% of District 2. Under Draft Map 2-25, District 2's Black population will decrease to 36.6% and District 2's white population will increase from 45.8 % to 56.4%.¹⁸ If Draft Map 2-25 is adopted, Black voters, who are 20.7% of the city's voting-age population, will no longer have an opportunity to elect a single city council member. The lack of proportionality, while not dispositive, is an indication that Prattville's proposed districting plan will result in an illegal vote dilution in violation of Section 2.¹⁹

¹⁵ Wood served in this position for 28 years until 2016 when Marcus Jackson, another Black-preferred candidate, born and raised in District 2 was elected. Marty Roney, *Wood closes 28 years of service to Prattville*, Montgomery Advertiser (Nov. 4, 2016) <https://www.montgomeryadvertiser.com/story/news/local/progress/2016/11/04/wood-closes-28-years-service-prattville/93284854/>.

¹⁶ This demonstrates racially polarized voting in Prattville. This is unsurprising as racially polarized voting is pervasive in Alabama. *See, e.g., Ala. Legis. Black Caucus v. Alabama*, 135 S. Ct. 1257, 1273 (2015); *United States. v. McGregor*, 824 F. Supp. 2d 1339, 1346 & n.3 (M.D. Ala. 2011).

¹⁷ U.S. Census Bureau, *Alabama: 2020 Census* (July 3, 2021) <https://data.census.gov/cedsci/table?q=prattville&tid=DECENNIALPL2020.P1>, (demonstrates growth of 40.9% among Prattville residents identifying as "Black or African American alone or in combination," as compared to decrease in residents identifying as "White alone").

¹⁸ Note, the demographic information cited by city council reflects District 2's total population, not the voting-age population. *See* Prattville City Council Minutes, Public Hearing Minutes, May 17, 2022 available at <https://weblink.prattvilleal.gov/WebLink/Browse.aspx?id=200568&repo=Prattville>.

¹⁹ Under *Johnson v. De Grandy*, proportionality under Section 2 "links the number of majority-minority voting *districts* to minority members' share of the relevant population." 512 U.S. 997, 1014 n.11 (1994) (emphasis added); A disparity between the "number of majority-minority voting districts and the minority group's share of the population" is probative of a Section 2 violation). *Id.* at 1025 (1994) (O'Connor, J., concurring).

In defense of Draft Map 2-25, the city contends that maintaining a majority-minority district would “fracture” District 2 and violate Alabama law. Presently, District 2 (which was previously under a consent decree that ended in 2004) is non-contiguous.²⁰ Alabama law requires that when there is reapportionment, “each district shall be formed of contiguous and to the extent reasonably possible, compact territory.”²¹ City council should work to develop a map that is contiguous, compact, and also does not dilute Black voting power.

III. City Council Should Revisit the Proposed Map and Develop an Inclusive Redistricting Plan.

The Prattville community has had insufficient time and information to meaningfully participate in the redistricting process. City council minutes reflect that on May 3, 2022, there was a resolution by the Council president to schedule a public hearing to review Draft Map 2-25.²² However, nowhere do the minutes reflect a discussion about how to publicize the upcoming hearing and involve the community. A review of the city website and local papers also do not reveal any sort of effort to publicize the hearing.

Minutes from the public hearing held on May 17, 2022, state “no one present to speak in favor or of [sic] Draft Map 2-25.”²³ The minutes reflect a discussion between city council, the city attorney, and the map maker; there is nothing that suggests the presence of any additional community members.

Equally concerning, there is minimal accessible information about the proposed map and how it will impact the community. A copy of Draft Map 2-25 can only be found if one searches online and reads through past draft city council agenda packets. The May 3, 2022 Draft Packet Agenda provides a copy of the proposed map but it does not include information relating to demographics, voting patterns, or changes from the current map.²⁴ The city should provide additional information and

²⁰ Prattville, City Council, District Map, <https://www.prattvilleal.gov/city-council/city-council-district-map.html> (last accessed July 4, 2022); See generally *Dillard v. City of Prattville*, No. 2:87 cv 1280 (N.D. Ala.).

²¹ Ala. Code § 11-44D -8.

²² Hamilton Richardson, *Prattville Council Faces Questions About Redistricting Plan at Tuesday meeting*, Elmore Autauga News (May 4, 2022), <https://elmoreautauganews.com/2022/05/04/prattville-council-faces-questions-about-redistricting-plan-at-tuesday-meeting/>.

²³ Prattville City Council Minutes, Public Hearing Minutes, May 17, 2022 available at <https://weblink.prattvilleal.gov/WebLink/Browse.aspx?id=200568&repo=Prattville>.

²⁴ Prattville city website, Council meeting agenda packets, May 5, 2022 available at <https://weblink.prattvilleal.gov/WebLink/DocView.aspx?id=305449&dbid=0&repo=Prattville>.

analysis to the public, including current demographic information and an analysis of whether any district will provide an opportunity for minority voters to elect their candidates of choice.

The community must also have a sufficient opportunity to evaluate the proposed map and any alternatives. There is currently a push to quickly vote on the proposed map, however, the next municipal election is not until August 2025.²⁵ In short, there is no need to rush the development of a city council map because there is no pending election. And certainly, this process should not be rushed at the expense of ample and meaningful public involvement. Doing so to date has led to a redistricting proposal which threatens to undermine the voice of Black voters in the city—which harms all residents—and can lead to costly and time-consuming litigation.²⁶

We request a response in writing from City Council by 5:00 p.m. on Friday, July 8th, explaining whether, and how, the city plans to address the issues we have identified. We are prepared to assist City Council, consistent with public participation rules or guidelines, in developing an inclusive redistricting plan that complies with Section 2 and the U.S. Constitution and look forward to your response.

Sincerely,

/s/ Ashley M. Burrell

²⁵ John Sharp, *Alabama moves almost all city elections to 2025: “Suffering from election fatigue”*, AL.com (Sept. 6, 2021), <https://www.al.com/politics/2021/09/alabama-moves-almost-all-city-elections-to-2025-suffering-from-election-fatigue.html>.

²⁶ For example, lawmakers in Charleston County, South Carolina, spent \$2 million unsuccessfully defending itself from a Section 2 claim. After losing the lawsuit, Charleston County paid an additional \$712,027 for plaintiffs’ attorneys’ fees and costs. *Moultrie v. Charleston Cty.*, No. 2:01-cv-00562-PMD (D.S.C. Aug. 8, 2005). Defending a Section 2 claim cost the city of Yakima, Washington, nearly \$3 million—\$1.1 million to defend and \$1.8 million to pay the ACLU who brought the Section 2 lawsuit in August 2012. Mike Faulk, Big Costs, *Heavy Hitters in ACLU Suit Against Yakima*, YAKIMA HERALD (Aug. 10, 2014), http://www.yakimaherald.com/special_projects/aclu/big-costs-heavy-hitters-in-aclu-suit-againstyakima/article_3cbce20-ee9d-11e4-bfba-f3e05bd949ca.html. And East Ramapo Central School District in New York recently paid its lawyers in excess of \$7 million for unsuccessfully defending a Section 2 lawsuit brought by the local NAACP branch and have been ordered to pay over \$4 million in plaintiffs’ attorneys’ fees and costs. Jennifer Korn, *ERCSD Threatens to Fire Teachers if Legal Fees Not Cut to \$1: NAACP Leaders Respond*, ROCKLAND COUNTY TIMES, Jan. 21, 2020, <https://bit.ly/39dKvij>; Report and Recommendation. See generally LDF, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation As of September 2021* (2021), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-9.19.21-Final.pdf>.

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