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Sent via email

Waller County Commissioners Court
Attn: Redistricting
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Dear Members of the Waller County Commissioners Court:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”)¹ write to remind the Waller County Commissioners Court (“Commissioners Court”) of its obligations to comply with the text and spirit of the Fourteenth Amendment to the U.S. Constitution and Section 2 of the Voting Rights Act (“Section 2”), as well as other laws and principles that are relevant in redistricting for this important local body.² In addition to correcting any malapportionment problems stemming from demographic changes in Waller County between 2010 and 2020, we urge the Commissioners Court to take seriously its affirmative obligation to consider whether Section 2 demands that this body develop two out of its four single-member districts to be comprised of a majority—or at minimum, a substantial plurality—of Black and/or Latino voters to ensure that voters of color in Waller County have the opportunity to elect their preferred candidates to the Commissioners Court or otherwise influence elections in Waller County. This is crucial given the continued patterns of racially polarized voting in countywide elections and presence of other factors. Currently, there is one district comprised of a majority of Black voters—Commissioner Precinct 3—and no precincts that are majority Latino, despite Black and Latino residents together making up a majority of Waller County’s population.

As reflected in the initial illustrative map that the Commissioners Court proposed on October 8, 2021, the Commissioners Court recognizes that it is possible to develop an additional commissioner district (Precinct 1) comprised of a plurality of Black and Latino voters. We offer comments below on the Commissioners Court’s illustrative map, and we further propose two alternative maps, included within the attached **Appendices A and B**, which comply with the U.S. Constitution, Section 2, other governing laws and principles, and,

¹ Since 1957, LDF has been a separate entity from the NAACP and its state and local branches.

² 52 U.S.C. § 10301.

by comparison to the map proposed by the Commissioners Court, go further in protecting the electoral opportunity of Waller County's voters of color.

I. This Commissioners Court Must Ensure Compliance with the U.S. Constitution and Section 2 of the Voting Rights Act.

As the Commissioners Court has recognized,³ it must ensure that any maps it adopts comply with the “One Person, One Vote” mandate of the Fourteenth Amendment’s Equal Protection Clause, which requires equal access to representation at all levels of government,⁴ as well as Section 2’s “nationwide ban on racial discrimination in voting.”⁵

A. Fulfilling the “One Person, One Vote” Requirement

State and local bodies such as the Commissioners Court may have population deviations within plus or minus five percent of the mathematical mean.⁶ These requirements are intended to ensure both equal electoral power for all voters and equal access to representation for all people throughout a state.⁷

³ Waller County Commissioners Court, *Waller County 2021 Redistricting: Initial Assessment*, at 2-4 (Sept. 29, 2021), <https://www.co.waller.tx.us/upload/page/0288/docs/2021%20Redistricting/Initial%20Assessment%20Presentation.pdf> (“Initial Assessment”).

⁴ *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.”).

⁵ *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 . . .”).

⁶ See *Reynolds v. Sims*, 377 U.S. 533, 568 (1964); (“The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races.”); see also *Gaffney v. Cummings*, 412 U.S. 735, 744–45 (1973) (“minor deviations from mathematical equality among state legislative districts” are not constitutionally suspect, but “larger variations from substantial equality are too great to be justified by any state interest”); *Brown v. Thomson*, 462 U.S. 835, 842 (1983) (holding that apportionment plans with a maximum population deviation among districts of less than 10% are generally permissible, whereas disparities in excess of 10% most likely violate the “one person, one vote” principle); *Chen v. City of Houston*, 206 F.3d 502, 522 (5th Cir. 2000) (finding that, if the maximum variation between districts exceeds ten percent, the state will be required to justify the variance by invoking legitimate concerns).

⁷ See *Reynolds*, 377 U.S. at 567-68; see also *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1967) (explaining that “[e]qual representation for equal number of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives.”); accord *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137 (1961); see also *Garza v. County of Los Angeles*, 918 F.2d 763, 775 (9th Cir. 1990) (explaining how all residents have a “right to petition

As the Commissioners' Court recognizes, the 2020 Census shows that Waller County's total population is now 56,794 people.⁸ Based on this number and that four of the five seats on the Commissioners Court are elected from single member districts,⁹ each precinct must, to the extent practicable, contain approximately 14,199 people.¹⁰ Due to population changes, Waller County's existing commissioner precinct districts, drawn after the 2010 Census, are now malapportioned and must be corrected.¹¹ Of note, Precinct 1 is significantly underpopulated (by 3,443 people or roughly 24%), while Precinct 4 is significantly overpopulated (by 4,500 people or roughly 32%).¹²

Any map this Committee adopts must address these apportionment issues, as the Commissioners Court's proposed illustrative map and our illustrative maps, discussed below, do.

B. Complying with Section 2 of the Voting Rights Act

Additionally, in developing a redistricting plan for the Commissioners Court, this body has an obligation under Section 2 of the VRA to ensure that, under the totality of circumstances, Waller County's Black and Latino voters, have an opportunity to participate in the electoral process and to elect representatives of their choice on an equal footing with white voters.¹³

Section 2 prohibits voting standards, practices, or procedures that either are enacted with racially discriminatory intent or have racially discriminatory results.¹⁴ Section 2 therefore requires states and localities within them like Waller, under certain circumstances, to draw districts that provide minority voters with an effective opportunity to elect their

their government for services" and "[i]nterference with individuals' free access to elected representatives impermissibly burdens their right to petition the government").

⁸ Initial Assessment, *supra* n.3 at 23.

⁹ The fifth seat is the county judge, elected at-large by all eligible voters in the County.

¹⁰ Initial Assessment, *supra* n.3 at 23.

¹¹ *Id.*

¹² *Id.*

¹³ 52 U.S.C. § 10301(b); *Thornburg v. Gingles*, 478 U.S. 30, 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).

¹⁴ *Chisom v. Roemer*, 501 U.S. 380, 394 & n.21 (1991).

preferred candidates (“effective minority opportunity districts”).¹⁵ To fulfill that obligation, this Commissioners Court must conduct a sensitive and “an intensely local appraisal” of the “totality of the circumstances,” under a “functional view of the political process.”¹⁶ This entails attention not only to the demographic composition of districts, but also to other factors such as “participation rates and the degree of cohesion and crossover voting.”¹⁷ Sometimes, but not always, such effective minority opportunity districts will be single-member districts comprised of a majority of Black voters (“majority-minority”), such as Precinct 3.¹⁸ Thus, in drawing effective minority opportunity districts, this Commissioners Court must not mechanically employ demographic thresholds. Nor may it minimize Black or Latino voters’ electoral strength by “packing” Black or Latino voters into districts with unnecessarily high Black or Latino populations or by “cracking” them into districts with insufficient populations to provide Black and Latino voters with an opportunity to elect their preferred candidates. Doing either would likely violate Section 2 and the U.S. Constitution.¹⁹

At minimum, any maps that this Commissioners Court adopts must preserve any effective Commissioners Court districts, such as Precinct 3, that are VRA-compliant. And this Commissioners Court should consider whether additional effective opportunity districts are possible. To be clear, the Black population in effective districts such as Precinct 3 must not be cracked to dilute the effective voting power of Black communities in violation of Section 2. But, at the same time, they also must not be artificially inflated beyond what is necessary

¹⁵ To determine whether a plan violates Section 2, a court will first examine the three “*Gingles* preconditions”: (1) whether the minority community in Waller County is sufficiently large and geographically compact to constitute a majority in an additional district; (2) whether minority voters are politically cohesive; and (3) whether bloc voting by white voters usually prevents minority voters from electing their preferred candidates in at-large elections or in majority-white districts in the County. *Gingles*, 478 U.S. at 50-51. Once these preconditions are established, “the court considers whether ‘on the totality of circumstances,’ minorities have been denied an ‘equal opportunity’ to ‘participate in the political process and to elect representatives of their choice.’” *Abrams v. Johnson*, 521 U.S. 74, 91 (1997) (quoting 52 U.S.C. § 10301(b)).

“[I]t will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances.” *Clark v. Calhoun Cty.*, 21 F.3d 92, 97 (5th Cir. 1994) (citation omitted).

¹⁶ *Gingles*, 478 U.S. at 79, 45 (internal quotation marks and citation omitted).

¹⁷ 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).

¹⁸ See, e.g., *Cooper v. Harris*, 137 S. Ct. 1455, 1472 (2017) (rejecting the argument that “whenever a legislature can draw a majority-minority district, it must do so,” because there are circumstances in which “a crossover district would also allow the minority group to elect its favored candidates.”).

¹⁹ *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).

for VRA compliance, which could violate the U.S. Constitution’s prohibition on racial gerrymandering. Finally, this body must endeavor to ensure the efficacy and fairness of other districts for Black and Latino voters in all other circumstances.

While we were pleased that the Commissioners Court’s proposed map maintains Precinct 3 as an effective majority-Black district, your map unnecessarily packs too many Black and Latino voters into that precinct. At the same time, under the Commissioners Court’s proposed map, Precinct 1 contains a bare plurality—but not a majority—of Black and Latino voting age citizens, who, in higher numbers, could form an effective voting block that would have a chance of electing candidates of choice.²⁰ The maps proposed by the signatories, discussed below, remedy this deficiency in the Commissioners’ Court proposed map, and we believe they satisfy all the requirements of the Constitution and Section 2, as well as the goals and principles identified by this Commissioners Court in its Order No. 210929-18.²¹

According to the 2020 Census, Black voters are about 24% of Waller County’s voting-age population (VAP) and Latino voters are about 28% of the County’s VAP. An important, but not dispositive, factor under Section 2 is whether “minority voters form effective voting majorities in a number of districts roughly proportional to the minority voters’ respective shares in the voting-age population.”²² As noted above, an assessment of effective minority voting opportunity is a complex, fact-intensive analysis. But we offer a few observations about Black representation under the current Commissioners Court plan and the illustrative plan proposed by the Commission at its October 8, 2021 meeting.

Although the race of elected officials does not necessarily correlate to voter preference, the U.S. Supreme Court has held that one of the “predominant” factors under Section 2 is “the extent to which members of the minority group have been elected to public office in the jurisdiction.”²³ At present, only one out of four members (25%) of the Commissioners Court is Black and *none* (0%) is Latino/a.

II. Additional Considerations Relevant to the Proposed Maps

Determining whether a given district’s demographic composition will provide Black and other voters of color of an equal access to the electoral process, as the U.S. Supreme Court noted in 2017, “is a difficult task, requiring, in the view of the Department of Justice, a

²⁰ *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988) (concluding that nothing in the text or history of the VRA prevents Black and Hispanic voters from alleging a single vote dilution claim together).

²¹ Order Adopting Criteria for Use in 2021 Redistricting Process, Order No. 210929-18 (Waller Cty. Comm’rs Ct., Sept. 29, 2021) <https://www.co.waller.tx.us/upload/page/0288/docs/2021%20Redistricting/Criteria%20for%20Redistricting%20Process.pdf>.

²² *Johnson v. De Grandy*, 512 U.S. 997, 1000 (1994).

²³ *Gingles*, 478 U.S. at 37.

‘functional analysis of the electoral behavior within the particular . . . election district.’²⁴ The U.S. Constitution demands an analysis that is no less nuanced and comprehensive.²⁵

To these ends, the analyses underlying our submission include, but are not limited to, a review of:

- 2020 Census data, including racial demographic data;
- recent statewide and county-level voting patterns, including racially polarized voting 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.

In doing so, assessing and developing our plans required analyses that are fact- and context-specific, which is equally necessary for this Commissioners Court’s assessment and creation of any redistricting plans. Any redistricting following the 2020 Census, in short, must be conducted with an awareness of all appropriate indicia of the ability of Black and Latino voters and other voters to participate equally.²⁶

Any racial bloc voting, for example, is one such consideration that the Commissioners’ Court must consider and take into account.²⁷ As a general matter, racial bloc voting continues

²⁴ *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 801, 197 L. Ed. 2d 85 (2017) (quoting Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act, 76 Fed. Reg. 7471 (2011)).

²⁵ *Id.* at 800 (in racial gerrymandering cases under the Fourteenth Amendment’s Equal Protection Clause, “[a] holistic analysis is necessary to give [the] evidence its proper weight”); *Bethune-Hill v. Virginia State Bd. of Elections*, 326 F. Supp. 3d 128, 177 (E.D. Va. 2018) (holding that the “lack of an individualized assessment is strong evidence” that a legislature’s use of race as a predominant consideration in redistricting was not narrowly tailored to achieve a compelling state interest); *Reynolds*, 377 U.S. at 578-79 (explaining relevant considerations for assessing compliance with the Constitution’s equal-population mandate).

²⁶ *See Cooper*, 137 S. Ct. 1455 (affirming the Middle District Court of North Carolina’s judgment that racial considerations predominated in the design of two districts, citing, among other things, uncontested evidence that mapmakers worked to ensure that Black voters remain in the voting minority).

²⁷ *Gingles*, 478 U.S. at 48 n.15; *see also De Grandy*, 512 U.S. at 1007 (explaining that racially polarized voting increases the potential for discrimination in redistricting, because “manipulation of

to exist in various elections in Texas generally and Waller County specifically. That is, there is a continued pattern in elections of candidates preferred by white voters typically defeating the candidates preferred by Black and Latino voters, despite some white voter support for Black and Latino voters' candidates of choice. Indeed, in 2016, the Fifth Circuit in *Veasey v Abbott*, 830 F.3d 216 (5th Cir. 2016), noted that "the Supreme Court has previously acknowledged the existence of racially polarized voting in Texas, and that in other litigation, Texas has conceded that racially polarized voting exists in 252 of its 254 counties," including in Waller County. *Id.* at 258; *see also* Trial Transcript, Day 5, *Veasey v. Perry*, No. 2:13-cv-00193 (S.D. Tex. Sept. 9, 2014), ECF 578 at 200:22-201:9 (Plaintiffs' expert testifying to his expert opinion that racially polarized voting, in fact, existed in all 254 counties). The Fifth Circuit observed that "[t]he State did not contest these findings before the district court." *Veasey*, 830 F.3d at 258. 149. In 2017, the Western District of Texas found "the existence of racially polarized voting throughout Texas" when it rendered its decision in *Perez v Abbott*, 253 F. Supp. 3d 864 (W.D. Tex. 2017).

Today, there are *no* Black elected officials in any positions in Waller County government that are elected countywide. Black candidates for countywide office have been uniformly defeated in recent elections. Former Precinct 3 Commissioner Jeron Barnett, who is Black, was an unsuccessful candidate for the countywide at-large position of Waller County Sheriff in 2004 and 2008, before running for the office he held until 2021 from a majority-Black district. In 2016, despite support from Black voters across the County, Cedric Watson, another Black candidate for Waller County Sheriff, attempting, like Commissioner Barnett, to become the first Black sheriff in Waller County's history, was defeated by a white candidate. In 2018, a Black candidate for Waller County Judge, Dr. Denise Mattox, was defeated by Waller County's Current County Judge, who is white. Based on our analyses, similar patterns also exist in other elections that Waller County voters participate in such as presidential, congressional, and State legislative elections.

A. Totality of Circumstances: Voters of Color Have Less Opportunity to Elect Candidates of Their Choice to the Waller County Commission.

In the context of other conditions operating in Waller County, under the "totality of the circumstances," Black and Latino voters have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice" to the Waller County Commissioners Court.²⁸ There is ample evidence that: there is

district lines can dilute the voting strength of politically cohesive minority group members"); *Westwego Citizens for Better Gov't v. City of Westwego*, 872 F.2d 1201, 1207 (5th Cir. 1989) ("Evidence of racially polarized voting is the linchpin of a section 2 vote dilution claim, and is relevant to establishing two of the three elements set forth in the *Gingles* decision—the political cohesiveness of the minority group and the ability of the white majority usually to defeat the minority's preferred candidate.").

²⁸ *Gingles*, 478 U.S. at 36-37 (quoting 42 U.S.C. § 10301(b)). To assess the totality of circumstances in Section 2 cases, Congress delineated the following non-exhaustive Senate Factors:

a history of discrimination related to voting in Waller County specifically and Texas generally; as discussed above, voting in the elections of the state of Texas and Waller County political subdivisions is racially polarized; Black and Latino voters bear the effects of discrimination in a variety of areas of life in Waller County; and there are needs of Black and Latino voters in Waller County that the Commissioners Court has been unresponsive to. For example:

- After the end of the enslavement of Black Americans following the Civil War in the late 1800s, for much of the 20th century, Black Americans were denied the equal opportunity to vote in Texas through the “white primary” system and other policies and practices that unconstitutionally prevented Black Americans from participating in the franchise.
- One of the relatively early examples of Texas’s history of racial discrimination in voting is the 1903 Terrell Law. The 1923 amendment to the Terrell Law explicitly forbade Black Americans from participating in voting in the Democratic Primary at a time when Texas stood out as virtually a one-party state. In *Nixon vs. Herndon*, 273 U.S. 536 (1927), the U.S. Supreme Court ruled against the Terrell Act and the constitutionality of the white primary system. *Id.* 23.
- The Supreme Court’s decision in *Smith v. Allwright*, 321 U.S. 649 (1944), began the process of eliminating the white primary. But further obstacles—from poll taxes to violent intimidation—still existed that prevented most Black citizens from exercising their right to vote.
- Amidst the voting discrimination, from the late 1800s and “[o]ver the course of the next 75 years, Waller County would be the site of among the highest numbers of lynchings of all of the counties in the State of Texas.”²⁹
- Because of its history of discrimination, Congress required the State of Texas and Waller County, among Texas’s other sub-jurisdictions, to preclear any and all voting changes under Section 5 of the VRA from 1975 until 2013, during which the U.S.

(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 Waller County 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 socioeconomic discrimination; (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 Black residents; and (9) whether the policy underlying the proposed map is tenuous. *Gingles*, 478 U.S. 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.

²⁹ Equal Justice Initiative, “Lynching in America: Confronting the Legacy of Racial Terror” (3d Ed., 2017) (retrieved from: <https://lynchinginamerica.eji.org/report/>).

Department of Justice objected to 201 proposed voting changes in Texas, including three objections against Waller County specifically.³⁰ One of those objections in Waller County involved a proposed discriminatory redistricting scheme. In 2002, the DOJ objected to a redistricting plan proposed by Waller County officials, citing census data and statistical analyses to demonstrate how the plan seemed purposefully designed to undermine the effectiveness of these racial minority voters.³¹

- An en banc decision of the Fifth Circuit in *Veasey v. Perry*, acknowledged the decades long record of voting discrimination in Waller County, 71 F. Supp. 3d 627 (S.D. Tex. 2014), *aff'd in part, vacated in part, remanded sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015), *on reh'g en banc, and aff'd in part, vacated in part, rev'd in part Veasey*, 830 F.3d at 216:³²
 - In 1971, after the 26th Amendment extended the vote to those 18 years old and older, Waller County which was home to Prairie View A & M University (PVAMU), a historically Black university, became troubled with race issues. Waller County's tax assessor and voter registrar prohibited students from voting unless they or their families owned property in the county. This practice was ended by a three-judge court in 1979.³³
 - In 1992, a county prosecutor indicted PVAMU students for illegally voting, but dropped the charges after receiving a protest from the DOJ.
 - In 2003, a PVAMU student ran for Commissioners Court. The local district attorney and county attorney threatened to prosecute students for voter fraud on the grounds that they did not meet the old domicile test. These threatened prosecutions were enjoined, but Waller County reduced early voting hours, which particularly harmed students due to election day occurring during their spring break. After the NAACP filed suit, Waller County reversed the changes to early voting and the PVAMU student narrowly won the election.

Indeed, the 5th Cir. called the actions of Waller County officials "reprehensible." *Veasey*, 830 F.3d at 232.

³⁰ U.S. Dep't of Justice, Civil Rights Div., Voting Determination Letters in Tex., <http://www.justice.gov/crt/voting-determination-letters-texas> (last visited Oct. 15, 2021).

³¹ Ltr., from J. Michael Wiggins, Acting Assist. Atty. Gen., to Denise Nance Pierce (June 21, 2002), <https://www.justice.gov/crt/voting-determination-letter-43>

³² *Veasey*, 71 F. Supp. 3d at 635-36.

³³ In 1979, the U.S. Supreme Court upheld a three-judge panel's ruling that Waller County's residency requirement for PVAMU students violated the Twenty-Sixth Amendment. *United States v. Texas*, 445 F. Supp. 1245, 1257 (S.D. Tex. 1978) (three-judge court), *aff'd sub nom. Symm v. United States*, 439 U.S. 1105 (1979).

- In *Veasey*, the Fifth Circuit noted that Texas maintained segregated schools well after *Brown v. Board of Education*, 347 U.S. 483 (1954)—and affirmed the district court finding that “past State-sponsored employment discrimination and Texas’s maintenance of a ‘separate but equal’ education system both contributed to the unequal outcomes that presently exist” for white and Black people throughout the state. 830 F.3d at 259.
- Today, socioeconomic disparities in Waller County permeate all facets of life. “As a result of systemic discrimination and the disparities in education, employment, housing, and transportation, the district court found that Hispanics and African-Americans make up a disproportionate number of people living in poverty, and thus have little real choice when it comes to spending money on anything that is not a necessity.” *Id.* For example, despite the presence of PVAMU, the only university in Waller County and a historically Black university, there are significant disparities in educational attainment between Black people in Prairie View and white people in Waller County. Among residents over 25 years old, 17.9% of Black people in Prairie View have less than a high school diploma, as compared to only 9.3% of white people countywide.³⁴
- In Waller County, poverty bears more heavily on Black voters than white voters.³⁵ For example, over half of the predominantly Black population of Prairie View lives in poverty, as compared to just over 6% of the predominantly white population of Katy.³⁶
- In recent years, Waller County’s law enforcement officials have become the focus of public scrutiny after Sandra Bland, a Black woman and PVAMU alumna, was found dead in 2015 in a Waller County jail three days after being stopped by a state trooper for allegedly failing to properly signal a lane change. The probe into Bland’s death, which a medical examiner ruled a suicide, included the possibility of murder.³⁷
- The announcement of Sandra Bland’s death came from County Sheriff Glenn Smith who himself carried a record of racism as chief of police in Hempstead. In 2007, Smith was suspended following complaints of racism and police brutality, and he was

³⁴ 2013-2017 American Community Survey data.

³⁵ 2013-2017 American Community Survey data.

³⁶ *Texas Poverty Rate by City*, Index Mundi (accessed Oct. 14, 2021), <https://www.indexmundi.com/facts/united-states/quick-facts/texas/percent-of-people-of-all-ages-in-poverty/cities#chart>.

³⁷ Sophia Bollag, Terri Langford, *Bland’s Death Being Treated Like Murder Investigation*, Houston Public Media (July 20, 2015), <https://www.houstonpublicmedia.org/articles/news/2015/07/20/121680/blands-death-being-treated-like-murder-investigation/>.

eventually fired after accusations were made against him, including that he forced young black people to undergo humiliating strip searches. Just months later, he was elected Waller County's sheriff. Smith previously served as chief sheriff's deputy in Sabine County, Texas, where in 1988, three white police officers were found guilty of beating a Black man to death in the county jail.³⁸

- A pattern of racially motivated behavior permeates the Waller County police ranks. In 2004, six local Black leaders filed a federal lawsuit in Houston against district attorney Oliver Kitzman accusing him of operating a “reign of terror” subjecting Black Waller County ministers, municipal officers, judges, and elected officials to undue official scrutiny.³⁹
- A Twitter account of a lead investigator at the Waller County Sheriff's Office was removed in 2019 after local reporters began asking questions about its racist content. Deputy Scott Holloway Green posted under @WallerCountyCID hundreds of tweets, many deemed racially charged.⁴⁰ In 2017, following multiple investigations by the Texas Rangers and the Texas Commission on Jail Standards for violations including Bland's death, evidence tampering, and the sexual assault of an inmate, Waller County officials demanded in 2017 that Sheriff Glenn Smith resign.⁴¹ Smith, the

³⁸ Michelle Toh, *Sandra Bland Death: Is Waller County 'the Most Racist County' in Texas?* The Christian Science Monitor (July 22, 2015), <https://www.csmonitor.com/USA/USA-Update/2015/0722/Sandra-Bland-death-Is-Waller-County-the-most-racist-county-in-Texas>; Shaun King, *Texas Sheriff Involved in the Death of Sandra Bland Fired from Previous Post for Racism*, Daily KOS (July 16, 2015), <https://www.dailykos.com/stories/2015/07/16/1402770/-Texas-Sheriff-involved-in-the-death-of-Sandra-Bland-fired-from-previous-post-for-racism>; Sharon LaFraniere, Richard A. Oppel and David Montgomery, *Texas County's Racial Past Is Seen as Prelude to Sandra Bland's Death*, The New York Times (July 26, 2015), <https://www.nytimes.com/2015/07/27/us/racial-divide-persists-in-texas-county-where-sandra-bland-died.html>.

³⁹ Billy Dragoo, *Lawsuit Targets Governor, Waller County Officials*, Chron (Aug. 18, 2004), <https://www.chron.com/neighborhood/article/Lawsuit-targets-governor-Waller-County-officials-9821914.php>; Harvey Rice and Terry Kliwer, *Waller County Suit Claims Race Bias*, Chron (Aug. 18, 2004), <https://www.chron.com/news/houston-texas/article/Waller-County-suit-claims-race-bias-1568065.php>; Jaeah Lee, *The Texas County Where Sandra Bland Died Is Fraught with Racial Tensions*, Mother Jones (Jul. 17, 2015), <https://www.motherjones.com/politics/2015/07/texas-waller-county-sandra-bland-racial-tensions/>.

⁴⁰ Whitney Miller, *Local Deput's Twitter Account Deleted After Controversial Tweets Surface*, KBTX (May 21, 2019), <https://www.kbtx.com/content/news/Deputys-Twitter-account-deleted-after-controversial-tweets-surface-510250161.html?ref=16> (indicating, for example, that Green replied to a photo of two dogs in hoodies with “I hope they're not into skittles,” a reference to the 2012 killing of Trayvon Martin in Florida).

⁴¹ Terry Kliwer, *Charges of Racism Ignite Waller County Politics*, Chron (Sept. 21, 2003), <https://www.chron.com/news/houston-texas/article/Charges-of-racism-ignite-Waller-County-politics-2129895.php>.

Waller County sheriff who oversaw the jail where Sandra Bland died, was fired in a previous job as Hempstead Police Chief in 2008 after allegations of racism and police misconduct.⁴²

- For years the industrial waste company Green Group Holdings, LLC had sought a permit to construct a landfill between the towns of Hempstead and Prairie View, the Waller County towns with among the highest Black and Latino populations. Green Group lobbied to place the landfill in Precinct 3, the county's sole majority-Black precinct, and farthest away from the majority-white city of Katy. The landfill would have been situated near PVAMU and exposed the majority-Black population to odors and toxins. After opposition from community members and PVAMU students, Green Group withdrew its request in 2018.⁴³
- In 2004, a resident successfully sued the city of Hempstead for not maintaining the city's largely Black cemeteries while devoting its resources to maintaining the largely white cemeteries. In the words of a former Waller County judge, "You've got racism from the cradle to the grave."⁴⁴
- Waller County officials have a long history of being unresponsive to demands by PVAMU students for equal access to the political process in Waller County—including by failing to provide equitable on campus voting opportunities—stretching from the 1970s into the present.⁴⁵
- Waller County has been unresponsive to what is known as the rural addressing issue impacting Prairie View residents, including Black PVAMU students. Prairie View

⁴² Ben Mathis-Lilley, *Sheriff in Sandra Bland Case Was Fired in 2008 After Racism, Brutality Allegations*, Slate (Jul. 16, 2015), <https://slate.com/news-and-politics/2015/07/sandra-bland-sheriff-fired-racism-allegations-sheriff-glenn-smith-accused-of-abuse-in-previous-job.html>.

⁴³ Brooke A. Lewis, *Company Ends Legal Efforts to Build Landfill in Waller County*, Chron (June 22, 2018), <https://www.chron.com/houston/article/Company-will-not-pursue-further-legal-action-on-13018135.php>; Press Release, *Green Group Holdings Will Not Pursue Further Legal Action on Pintail Landfill Permit*, Green Group Holdings, LLC (Jun. 26, 2018), <https://www.gghcorp.com/news/green-group-holdings-will-not-pursue-further-legal-action-on-pintail-landfill-permit/>.

⁴⁴ Tom Dart, *The Texas County Where Sandra Bland died: There's 'racism from Cradle to Grave,'* The Guardian (July 17, 2015), <https://www.theguardian.com/us-news/2015/jul/17/sandra-bland-alleged-suicide-waller-county-texas-racism>; Billy Dragoo, *Judge Dismisses Cemetery Lawsuit Against County*, Chron (Updated Oct. 5, 2016), <https://www.chron.com/neighborhood/amp/Judge-dismisses-cemetery-lawsuit-against-county-9798984.php> (explaining that the federal claims against Hempstead involving racial discrimination were not dismissed).

⁴⁵ Alexa Ura, *Students at Texas' oldest Black university fight a legacy of voter suppression*, Texas Tribune (Feb. 25, 2021), <https://www.texastribune.org/2021/02/25/waller-county-texas-voter-suppression/>

residents are disadvantaged—particularly in voting and registration—by Waller County’s overreliance on the U.S. Postal Service’s addressing system for uses that are unrelated to the delivery system.

In light of these facts, there is strong evidence based on the totality of circumstances that Black voters in Waller County have less opportunity to elect candidates of their choice under the current district map.

As you continue to engage in the determinations necessary to the redistricting process, we submit, as **Appendices A and B** to this letter, two proposed Commissioners Court’s maps and associated statistical reports. We will provide shapefiles and block assignment files for these maps to the Commissioners Court upon request. These maps address the Fourteenth Amendment’s equal-population mandate, consider Section 2 compliance, and are informed by Waller County’s voting patterns, history, and other relevant data and information.⁴⁶ Our goal in developing these maps is to ensure that all voters have access to representation and Black and Latino voting power is not diluted in the process.

III. Transparency During the Redistricting Process

We view our proposed maps as the beginning, not the end, of this process. These are not the only conceivable maps that could satisfy the criteria outlined above; nor do they purport to incorporate the extensive community input that is necessary to drafting equitable maps. They are simply examples of maps that we believe merit this Commissioners Court’s due consideration.

This Commissioners Court must, therefore, continue to facilitate this work and solicit community feedback at all stages of the redistricting process. To meet these objectives, this Commissioners Court must provide meaningful opportunities for the public to testify and provide public comments on maps proposed by it or other members of the public, emphasizing that the public must have an opportunity to respond to proposed maps *before* any such maps are finalized or approved. We note that the Commissioners Court’s illustrative plan was presented to the public only 12 days before the Commissioners Court meeting at which the Commissioners Court proposes to receive *all* public input. Twelve days is an insufficient time for community members, most of whom do not have ready access to demographers or expertise in the redistricting process, to analyze the proposed map or prepare an alternative map.

Transparency and robust public input are necessary to assist this Commissioners Court with its affirmative obligations to comply with the U.S. Constitution, Section 2 of the

⁴⁶ While we believe that these maps are *sufficient* for compliance with Section 2, we make no representations as to whether the demographic percentages in any particular district in these draft maps are *necessary* for Section 2 compliance. An assessment of that question would require a more finely detailed analysis, including of racial polarization patterns, which we are unable to complete before an anticipated deadline for map submissions.

Voting Rights Act, and other legal considerations and redistricting principles. Based on the law, Waller County's recent history, and its Guidelines—which appropriately prioritize constitutional and Section 2 compliance⁴⁷—the Commissioners Court should revisit its process immediately and ensure ample time for meaningful consideration and analysis, for the public to digest its maps, and for courts to adjudicate any constitutional claims well in advance of the 2022 election cycle. In addition, this Commissioners Court should hold additional public hearings beyond the Commissioners Court meeting scheduled for October 20, 2021—with the opportunity for remote participation—to receive comments on maps proposed by members of the public and this Commissioners Court.

In closing, we welcome working with the Commissioners Court in pursuing these more inclusive options, and to help it to avoid the costly and lengthy litigation that may otherwise be needed to ensure the Commissioners Court's obligations.⁴⁸ Please feel free to contact Leah Aden and/or Stuart Naifeh with any questions or to discuss these issues in more detail. We look forward to hearing from you soon and working together for the people of Waller County.

Sincerely,

/s/ Leah Aden

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⁴⁷ Order No. 210929-18, *supra* n.21.

⁴⁸ *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation*, NAACP Legal Defense and Educ. Fund, Inc. (Sept.21, 2021), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-9.19.21-Final.pdf>

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