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Sent via electronic mail

North Charleston City Council

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Re: Redistricting Process in North Charleston

Dear North Charleston City Council Members:

The NAACP Legal Defense Fund (“LDF”), the South Carolina State Conference of the NAACP, and the ACLU of South Carolina write to notify you that we are closely following the redistricting cycle in South Carolina, including in North Charleston. We encourage the North Charleston City Council (“City Council”) to create meaningful opportunities to ensure that all residents’ voices are heard and meaningfully included at *all* stages of the redistricting process. As nonprofit, nonpartisan civil rights and racial justice organizations, we aim to ensure the adoption of fair and nondiscriminatory redistricting plans at every level of government, and we are available to serve as a resource.

In pursuit of these pro-democracy goals, as you develop and consider your redistricting plans, we write to (1) recommend how to involve community members and ensure transparency in the redistricting process, and (2) remind the City Council of its affirmative obligations to comply with the Fourteenth Amendment to

the U.S. Constitution's one person, one vote principle and Section 2 of the Voting Rights Act ("VRA").

We understand that the City Council is engaged in the redistricting process. As more fully explained below, **before adopting a new map, the City Council must share any proposed maps it is considering on its website with shapefiles and/or block equivalency files, and it must do so with adequate time to allow members of the public to assess and review the proposed maps. The City Council should also hold several public hearings to hear from members of the public with regard to proposed maps. Moreover, given the number of Spanish-speaking voters in North Charleston, we also strongly encourage the City Council to make notices, information about public hearings, and other information about the redistricting process available in Spanish, and to make interpreters available during the public hearings.**

As of this letter, the City Council has not provided any redistricting information or any proposed redistricting map on its website, where the public can easily access it. **It is crucial for the City Council to be transparent in its redistricting process and to solicit community feedback on proposed maps before adopting them.**

As detailed below in Section II(B), any maps that the City Council adopts during this redistricting cycle must preserve VRA-compliant districts that remain necessary and effective for Black voters in North Charleston to elect candidates of their choice.

I. The City Council Must Ensure Transparency and Public Involvement During All Phases of the Redistricting Process

No one is more qualified than North Charleston's residents to discern which maps allow (or do not allow) communities to have a voice and a choice in the process of electing their representatives. Any map that the City Council proposes or otherwise considers must reflect the City's residents in all their diversity. As the City Council develops its plan, we therefore share the following recommendations to assist it in meeting this significant responsibility.¹

(1) Ensure Transparency: Informed involvement by all residents requires transparency and meaningful opportunities for public participation at all

¹ In August 2021, the present signatories wrote to the Municipal Association of South Carolina, in part, with similar recommendations about how their members should involve community members and ensure transparency in the redistricting process. Letter from LDF, et al., to the S.C. Mun. Ass'n of S.C. (Aug. 24, 2021), https://www.naacpldf.org/wp-content/uploads/8.24.2021_Letter-to-the-Municipal-Association-of-SC_Final.pdf.

stages of the redistricting process. We further encourage the City Council to:

- a. Regularly update its website about redistricting and share information on social media platforms.* These updates should include public meeting notices, proposed meeting agendas, and proposed maps, which should be posted at least a week before the City Council considers any map, along with all relevant district-level data associated with any proposed maps, including but not limited to demographic data.
- b. Publicize all data used by the City Council to inform its redistricting plans.* Make data available in real time, including any data released by the U.S. Census Bureau relevant to North Charleston and redistricting. This data should be publicized in a format that can be easily accessed and used by the public.
- c. Publish a tentative schedule for proposing and adopting maps.* To allow opportunities for meaningful input and informed participation by interested residents, share with the public a tentative schedule or timeline by which the City Council is likely to consider and vote on maps.

(2) Create Formal Mechanisms for Public Involvement and Prioritize Public Involvement: The City Council should establish a formal mechanism that allows residents to provide meaningful input about proposed redistricting criteria, maps, and other redistricting procedures—during all stages of the redistricting process. The City Council should also adopt processes and safeguards for the benefit of all North Charleston residents:

- a.* Receive and consider public input on any redistricting guidelines and principles—a critical first step—before drawing or considering any maps.
- b.* Formally make public input part of the public record and incorporate public testimony into any redistricting principles the City Council may adopt to supplement federal and constitutional redistricting requirements.
- c.* Host regular public hearings and publish adequate notice and documentation of all such meetings during all stages of the redistricting process. To account for community members’

caretaking, family, and work commitments and schedules, public meetings should be easily accessible and not ordinarily held during regular business hours. The public should be granted sufficient notice of hearings in advance to allow communities to prepare meaningful testimony and supporting materials, including proposed maps. To ensure that the voices of voters of color are heard, the City Council should proactively post notice of public hearings at minimum on its website, but also in media outlets that serve communities of color. The City Council should also utilize social media platforms that reach a wide range of residents to ensure that voices integral to the redistricting process are included.

- d. Allow remote participation for members of the public who cannot travel or take time off from work or other obligations to attend any City Council redistricting hearings in person, or who cannot attend due to health concerns. Such individuals should be provided multiple opportunities, as early as possible, (1) to respond to maps proposed by the City Council, (2) to offer legally compliant alternatives to the City Council's proposals, (3) to have the City Council consider any such alternatives and engage in robust discussion with members of the public about proposed maps through remote testimony options, and (4) to submit written comments and questions to be incorporated into the record leading to the adoption of any final plan.

In addition to the guidance and recommendations in this letter, we also urge the City Council to review ***Power on the Line(s): Making Redistricting Work for Us***,² a guide for community partners and policy makers who intend to engage in the redistricting process at all levels of government. The guide provides essential information about the redistricting process, such as examples of recent efforts to dilute the voting power of communities of color and considerations for avoiding such dilution. The guide includes clear, specific, and actionable steps that community members and policy makers can take to ensure that voters of color can meaningfully participate in the redistricting process and hold legislators accountable. We also recommend that the City Council review the U.S. Department of Justice's recently

² See LDF, Mexican American Legal Defense and Educational Fund, and Asian Americans Advancing Justice | AAJC, *Power on the Line(s): Making Redistricting Work for Us*, (2021), <https://www.naacpldf.org/press-release/civil-rights-organizations-release-redistricting-guide-to-support-black-latino-and-aapi-communities-participation-in-crucial-process/>.

published guidance on federal statutes regarding redistricting and methods for electing public officials.³

Again, it is vitally important that, before adopting any map, the City Council **publish on its website the proposed map it is considering with shapefiles and/or block equivalency files and allow the public to provide feedback on the City Council’s proposed map and maps proposed by members of the public.**

II. The City Council Must Comply with the U.S. Constitution and Section 2 of the Voting Rights Act

To ensure equality of representation—a cornerstone of our democracy—the U.S. Constitution’s Fourteenth Amendment requires states and localities to balance the populations of people among districts at all levels of government. 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 Voting Rights Act requires that voters of color be provided 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 City Council must, therefore, ensure that any maps it adopts complies with the “One Person, One Vote” mandate of the Fourteenth Amendment’s Equal Protection Clause⁴ and the VRA’s “nationwide ban on racial discrimination in voting.”⁵

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

The “One Person, One Vote” principle provides that redistricting schemes that weaken the voting power and representation of residents of one area of a state or locality as compared to others elsewhere in the same state or locality cannot

³ Guidance Under Section 2 of the Voting Rights Act, 52 U.S.C. 10301, for Redistricting and Methods of Electing Government Bodies, U.S. Dept. of Justice (Sept. 1, 2021), <https://www.justice.gov/opa/press-release/file/1429486/download>.

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 . . .”).

withstand constitutional scrutiny.⁶ In *Reynolds v. Sims*, the U.S. Supreme Court explained that: “[d]iluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race . . . or economic status”⁷ Since *Reynolds*, “the seats in both houses of a bicameral state legislature must be apportioned on a population basis.”⁸

Maps may violate this principle if a legislative body’s districts impermissibly deviate from population equality. State and local legislative bodies, such as the City Council, may have population deviations within plus or minus five percent of the mathematical mean.⁹ This requirement is intended to ensure both equal electoral power for all voters and equal access to representation for all people throughout a state.¹⁰ Impermissible deviations from population equality among districts may elicit a malapportionment lawsuit, requiring the legislative body responsible for redistricting to show that an adopted plan legitimately advances a rational state policy formulated “free from any taint of arbitrariness or discrimination.”¹¹

In the 2016 case of *Evenwel v. Abbott*, the U.S. Supreme Court acknowledged the longstanding principle that “representatives serve all residents, not just those

⁶ See *Reynolds*, 377 U.S. at 567–68.

⁷ *Id.* at 565–66.

⁸ *Id.*

⁹ See *Reynolds*, 377 U.S. at 568 (“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).

¹⁰ 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 their government for services” and “[i]nterference with individuals’ free access to elected representatives impermissibly burdens their right to petition the government”).

¹¹ *Roman v. Sincok*, 377 U.S. 695, 710 (1964); see *Brown*, 462 U.S. at 847–48 (stating that “substantial deference” should be given to a state’s political decisions, provided that “there is no ‘taint of arbitrariness or discrimination’”); see also *Brown*, 462 U.S. at 852 (Brennan, J., dissenting) (“Acceptable reasons . . . must be ‘free from any taint of arbitrariness or discrimination’”).

eligible or registered to vote.”¹² Relying on this principle, the Court affirmed that an appropriate metric for assessing population equality across districts is total population—counting all residents.¹³ In cases dating back to at least 1964, “the Court has consistently looked to total population figures when evaluating whether districting maps violate the Equal Protection Clause by deviating impermissibly from perfect population equality.”¹⁴

Relying on total population is necessary to ensure that elected officials are responsive to an equal number of residents, as well as that their residents have an equal ability to “make their wishes known” to them.¹⁵ The City Council, for example, provides key governmental services to all North Charleston’s residents, including fire protection, public safety, sanitation, public health, parks and recreation, education, and other traditional public services provided by local governments.

B. Complying with the Voting Rights Act

The City Council has an obligation to comply with Section 2 of the VRA as it develops its redistricting plan. Compliance is necessary to ensure that, under the totality of circumstances described below, racial minority voters, such as Black North Charleston voters, have an equal opportunity to participate in the electoral process and elect representatives of their choice.¹⁶ Section 2 therefore requires the City Council, under certain circumstances, to draw districts that provide minority voters with an effective opportunity to elect their preferred candidates (“effective minority opportunity districts”).

¹² *Evenwel v. Abbott*, 136 S. Ct. 1120, 1132 (2016).

¹³ *Id.*

¹⁴ *Id.* at 1131; *see also id.* at 1124 (Accordingly, “[t]oday, all States use total-population numbers from the census when designing congressional and state-legislative districts . . .”).

¹⁵ *See 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*, 918 F.2d at 775 (explaining how all residents have a “right to petition their government for services” and “[i]nterference with individuals’ free access to elected representatives impermissibly burdens their right to petition the government.”).

¹⁶ 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).

A City 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 or by “cracking” them into districts with insufficient populations to provide Black voters with an opportunity to elect their preferred candidates. A map may also violate Section 2 by mechanically employing demographic thresholds.¹⁷ Section 2 prohibits minority vote dilution regardless of whether a plan was adopted with a discriminatory purpose.¹⁸ 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 U.S. Supreme Court has established the following three *Gingles* preconditions for evaluating vote dilution under Section 2: whether (1) an illustrative districting plan can be drawn that includes an additional district in which the minority community is sufficiently large and geographically compact to constitute a majority in a single-member 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.¹⁹ Together, the second and third *Gingles* preconditions are commonly referred to as racial bloc or racially polarized voting, which is described below in more detail.

Once 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.”²⁰

¹⁷ *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).

¹⁸ *Gingles*, 478 U.S. at 35.

¹⁹ *Id.* at 50–51.

²⁰ 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

To comply with Section 2, the City Council must conduct a sensitive and “an intensely local appraisal” of the “totality of the circumstances,” as described above, under a “functional view of the political process.”²¹ 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.”²² Sometimes such effective minority opportunity districts will be single-member districts comprised of a majority (more than 50%) of Black voters (“majority-minority” districts).

During this redistricting cycle, any maps that the City Council adopts must preserve VRA-compliant districts that remain necessary and effective for Black voters in North Charleston to elect candidates of their choice.

In sharing the information outlined above, our endeavor is to ensure that all voters have access to representation and Black voting power is not diluted during the redistricting process in North Charleston. Any dilutive redistricting plan that deprives Black voters of the opportunity to elect their preferred candidates directly impacts Black voters’ access to representatives who would be responsive to the needs of their communities. The district lines drawn during this redistricting cycle will determine, for at least the next decade, whether Black community members in North Charleston 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 critical infrastructure such as roads and sidewalks.

Moreover, failure to comply with Section 2’s requirements during this redistricting cycle would also expose North Charleston to costly litigation.²³ For example, in the 2000 redistricting cycle, lawmakers in Charleston County spent \$2 million unsuccessfully defending against a Section 2 claim.²⁴ After losing 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.

²¹ *Gingles*, 478 U.S. at 45 (internal quotation marks and citation omitted).

²² Bernard Grofman, Lisa Handley, and 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.”).

²³ *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>.

²⁴ Order Granting Attorneys’ Fees, *Moultrie v. Charleston Cty.*, No. 2:01-cv-00562-PMD (D.S.C. Aug. 8, 2005).

lawsuit, the County paid an additional \$712,027 in plaintiffs' attorneys' fees and costs.²⁵

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In closing, we welcome working with the City Council in meeting its obligations during this redistricting cycle. Please feel free to contact Raymond Audain at raudain@naacpldf.org or 212-965-7709 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 North Charleston.

Sincerely,

/s/ Raymond Audain

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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

²⁵ 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)).

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.