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October 30, 2021

*Sent via email*

Waller County Commissioners Court  
Attn: Redistricting  
836 Austin St., Suite 203  
Hempstead, Texas 77445  
[redistricting@wallercounty.us](mailto:redistricting@wallercounty.us)

Dear Members of the Waller County Commissioners Court:

We, the NAACP Legal Defense Fund, write to address several issues that arose during the Waller County Commissioners Court's redistricting public hearing on October 27, 2021.

First, we are concerned that the opportunity for public participation in Waller County's redistricting process has been woefully inadequate. We urge this body to schedule a public hearing outside of the workday that is dedicated solely to redistricting and includes robust opportunities for remote participation. Otherwise, residents of Waller County whose voices are integral to this process may be shut out altogether. The concerns leading to this request were amply born out at the October 27 Commissioners Court meeting. The October 27 meeting ran from 9:00 a.m. to after 1:15 p.m. cst. Redistricting was item 28 on the agenda. At 9:00 a.m., several members of the community joined by phone and expressed that they wanted to comment on redistricting; Judge Duhon instructed them to wait until item 28, without any indication of what time that item would come up for discussion. At 10:50 a.m., immediately prior to taking up item 28, the Commissioners Court went into executive session, again without indicating how much longer people would have to wait to discuss redistricting. When item 28 was finally taken up, and the call-in line was reopened, many of the people who had requested to speak by phone at 9:00 a.m. did not rejoin the call to provide their comments. Others who had attended in person had to leave the meeting before the redistricting public hearing began.

All of redistricting sessions to date, on September 29, October 8, October 20, and October 27, have all occurred during working hours, with redistricting discussed near the end of the agenda at non-specified times. All of this makes participation difficult or impossible for working people, people in school, caretakers, and others in the community who are unable to devote several hours to waiting for an opportunity to speak. A public hearing dedicated solely to redistricting—announced well ahead of time and scheduled outside working hours—would provide the community a genuine opportunity to participate in this important process.

Second, we understand that members of the public may have emailed this body about redistricting. For example, Mr. Luther and Mr. Rowland indicated on October 27 that they had provided documents with their concerns. How will those public comments be made available to the public? We urge you to formally make them part of the public record at the

next Commissioners Court meeting on November 3 and to post them on the County's redistricting website.

Third, as you are aware, LDF has submitted three proposed maps to date.<sup>1</sup> Two maps include two districts that will allow opportunities for Black and/or Latino voters to be the numerical majority to enable them the opportunity to elect candidates of their choice in precincts 3 and 1.<sup>2</sup> Precinct 3 comprises a community of interest of the city of Prairie View and a majority of Black voters. Precinct 1 includes communities of interest of the cities of Hempstead and Brookshire and a majority of Black and Latino voters. The version of this map submitted on October 25 (identified as Plan C on the [Commissioners Court website](#)) places all incumbents in the precinct in which they are currently elected.<sup>3</sup>

As our letters explained, the municipalities of Brookshire and Hempstead share residents with lower income and educational attainment and a desire for representation to address access to infrastructure, jobs, activities for youth, public parks and recreational programs, and quality, affordable housing.<sup>4</sup> Mr. Jackson and Mayor Rowland explained that these communities share nearly identical per capita income of almost \$17,000, which is considerably lower than the \$25,000 for Waller County as a whole.<sup>5</sup> And the poverty rates of Black and Latino people in these municipalities are each over 20%, compared with 13% county-wide.<sup>6</sup> County representation responsive to the shared needs of Brookshire and Hempstead could allocate federal and state grants to make sure students have adequate internet access and residents are safe from floods and fires. Hempstead councilmember Erica Gillum expressed support on behalf of her constituents for the October 25 plan proposed by LDF.

Fourth, we are concerned that the considerations the Commissioners appear poised to rely on in adopting a map are arbitrary and inconsistent. For example, on October 27, Judge

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<sup>1</sup> Those maps can be accessed on the Commissioners Court's website at <https://www.co.waller.tx.us/page/Redistricting>.

<sup>2</sup> The third map that LDF submitted on October 19, 2021, labeled Appendix B, is not the map that members of the community have spoken in support of. That map is an effort to modestly improve the map the Commissioners prepared using the Commissioners Court's purported guidelines, some of which are not mandated by federal law.

<sup>3</sup> Supplemental Ltr. from NAACP LDF to Waller County Commissioners Court (Oct. 25, 2021).

<sup>4</sup> *Id.*; Ltr. from NAACP LDF to Waller County Commissioners Court (Oct. 19, 2021), available at <https://www.naacpldf.org/wp-content/uploads/Letter-to-Waller-County-Commissioners-Court-final.10.19.21.pdf>.

<sup>5</sup> U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/brookshirecitytexas,hempsteadcitytexas,wallercountytxas/PST045219> (accessed Oct. 28, 2021).

<sup>6</sup> *Id.*

Duhon said that “the definitions of community of interest” can be racial demographics, income, or education. But later in the session, Judge Duhon said that, in his opinion, people who live near each other (“really geographic, compact precincts”) constitute communities of interest even if they have nothing else in common and have divergent policy priorities. This is not only inconsistent with his previous statements, but it is also not a generally accepted understanding of community of interest.<sup>7</sup>

Moreover, as Judge Duhon appears to recognize, none of the proposed maps satisfy his stated understanding of “communities of interest. As Judge Duhon observed, there has always been north-south interconnectedness and interdependence in Waller County, which he explained led to “this precinct 1 that’s elongated.” Significantly, all the maps currently under consideration, both those proposed by the Commissioners and those proposed by LDF, reflect a Precinct 1 that runs north and south through the County. And if geographic proximity were a relevant consideration, LDF’s October 25 would be superior on this measure. LDF’s map does not run as far north or south as the Commissioners’ proposals. Relatedly, Commissioners expressed a concern about the compactness of LDF’s proposed maps. While compactness is a criterion this body has identified as a consideration in its mapping,<sup>8</sup> this is a principle that must not take priority over federal obligations to protect communities of color who make up communities of interest in Waller County and require access to fair representation. Ultimately, LDF’s proposed maps as compared to the County-proposed maps reflect shapes, including of precinct 1, that are necessary to keep communities of interest together *and* are consistent with the historic north-south interconnectedness Judge Duhon cited.

We also note that Waller County Republican Party Chair David Luther’s reading and application of the law may lead this body astray. Mr. Luther did not offer a principled reason for choosing one map over the others. Instead, he called on the Commissioners Court to gerrymander the map in favor of Republicans, citing *Rucho v. Common Cause*,<sup>9</sup> which he interpreted to mean, “now you can gerrymander all you want as long as you don’t hurt a protected class by doing it, by dividing or packing racial groups.” But Mr. Luther failed to point out that the Commissioners’ own proposals could risk running afoul of constitutional and statutory commands that protect against the dilution of the ability of protected classes of Black and Latino voters in Waller County to participate in the electoral process on an equal footing with white voters.<sup>10</sup> Mr. Luther’s statement that he is “going to go with you guys”

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<sup>7</sup> For a more commonly accepted explanation of the term Community of Interest, *see, e.g.*, NAACP LDF, MALDEF, & AAJC, *Power on the Line(s): Making Redistricting Work for Us*, 24-25 (May 11, 2021), [https://www.naacpldf.org/wp-content/uploads/LDF\\_04142021\\_RedistrictingGuide-22e.pdf](https://www.naacpldf.org/wp-content/uploads/LDF_04142021_RedistrictingGuide-22e.pdf).

<sup>8</sup> Order No. 210929-18, *Order Adopting Criteria for Use in 2021 Redistricting Process*, Waller County (Sept. 29, 2021), <https://www.co.waller.tx.us/page/Redistricting>.

<sup>9</sup> 139 S. Ct. 2484 (2019).

<sup>10</sup> *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 442 (2006) (criticizing “the troubling blend of politics and race” that characterized the Texas congressional redistricting plan that the Court found to have a discriminatory purpose); *id.* at 440 (stating that taking away a political

[presumably the Commissioners] because your proposals do the “best job” given “the population we find ourselves having in this county” is plainly at odds with the fact that the Commissioners Court’s proposed redistricting plans maintain 3 out of 4 commissioner precincts with a white voting majority despite that the majority of Waller County’s voting population is Black and Latino.

Ironically, Mr. Luther went on to suggest that creating a redistricting plan that better reflected the racial and ethnic make-up of the county would violate the Equal Protection Clause and expose the County to litigation. This runs contrary to settled law, which recognizes that the racial makeup of communities can and often must be considered in drawing electoral lines. The Supreme Court held that race cannot be used as the sole or predominant basis for drawing districts.<sup>11</sup> This does not mean that race cannot be considered at all. Rather, if race is the predominant factor when drawing a district, it will have to survive “strict scrutiny,” meaning that the use of race must be narrowly tailored to serve a compelling justification. Section 2 of the Voting Rights Act provides this compelling justification: It requires the consideration of race, among other factors, to ensure that Black, Latino, and other voters of color have an equal opportunity to participate in the political process and elect candidates of their choice.<sup>12</sup> LDF’s redistricting proposals, consistent with established law, provide a new majority-minority district to prevent minority vote dilution in Waller County.<sup>13</sup> Moreover, these districts are based not only on race or ethnicity, but on the shared social, economic, educational, infrastructure and other concerns of communities of interest in the County.

Finally, this body indicated that it may put out a new plan on November 3, the last date for considering maps at this time. If that is true, as Dr. Brown, a community member participant at the October 27 hearing indicated, how will the community be able to analyze it and respond with meaningful time before any plans are voted on and adopted on November 3? Since the beginning of this redistricting process, the Commissioners Court has indicated that a final vote could be scheduled for Nov. 12, and this would still allow you to meet the first day to file primary election applications.<sup>14</sup> We urge you to delay the final vote, as you repeatedly indicated was possible, to allow more time for community engagement.

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opportunity just as minorities were about to exercise it “bears the mark of intentional discrimination”); *Hunter v. Underwood*, 471 U.S. 222, 233 (1985) (finding intentional discrimination where a state enacted a law to harm Black and poor white voters for partisan purposes); *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 226–27 (4th Cir. 2016) (similar); *Cooper v. Harris*, 137 S. Ct. 1455, 1473 n.7 (2017) (“In other words, the sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political) characteristics.”).

<sup>11</sup> *Shaw v. Reno*, 509 U.S. 630 (1993).

<sup>12</sup> 52 U.S.C. § 10101.

<sup>13</sup> *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).

<sup>14</sup> Tex. Elec. Code § 172.023.

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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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Eric Green, Brookshire Alderman Position 5

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