



**Testimony of Leah Aden
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**Before the South Carolina House of Representatives
Redistricting Ad Hoc Committee**

Hearing on Proposed House Redistricting Plans

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Good afternoon, Chair Jordan and Committee members. My name is Leah Aden, and I am a Deputy Director of Litigation with the NAACP Legal Defense and Educational Fund, Inc. (also known as “LDF”). LDF has been a separate organization from the NAACP since 1957.

Thank you for the opportunity to participate in this afternoon’s discussion about redistricting for the 124 members of the South Carolina House of Representatives. Section 5 of the Voting Rights Act, as has been discussed, ensured during prior redistricting cycles for nearly 50 years that South Carolina’s legislative plans were not retrogressive—that is, that officials did not implement plans that made the ability of Black voters’ to participate politically worse off as compared to existing benchmark plans.¹ Indeed, Section 5 prevented the elimination of districts comprised of a majority of Black voters, where the conditions existed necessitating such districts, and stagnant quotas for particular districts.

In addition to the loss of Section 5, as discussed, this body is also embarking on redistricting in the face of the U.S. Supreme Court’s refusal to establish a federal claim to challenge the manipulation of redistricting lines for partisan advantage.

To be sure, even without preclearance, as we have conveyed to this Committee in various previous correspondence, this body must continue to comply with the U.S. Constitution and another provision of the VRA, Section 2—both of which realize the Fourteenth and Fifteenth Amendment’s prohibitions on racial discrimination in redistricting. I’d note that there’s been reference to past plans and split precincts being approved by Section 5. But a jurisdiction could have met Section 5’s standard and still run afoul of Section 2 and/or the Constitution because they have different standards.

And even without a federal protection against partisan gerrymandering, the Constitution protects against the intentional manipulation of redistricting lines based on party affiliation if, in so doing, Black voters are harmed.

As President Murphy explained, during this redistricting cycle, LDF is working with a coalition of groups. I am pleased to supplement President Murphy’s testimony by further explaining our coalition’s

proposed House redistricting plan, which we jointly submitted to this Committee on October 8. I also will provide a few preliminary observations on the Committee's proposed state House map, which you released this past Monday—less than two days ago.

Indeed, given the timing, we plan to provide additional written comments on the House's proposed plan in the coming days to supplement these remarks. I would be remiss if I did not mention that LDF, SC NAACP, and the ACLU have the benefit of working with experts trained in developing maps. Even with these resources, it has been prohibitive to assess the full scope of House's proposed map and the 124 districts within it in under two days.

With that, I will remind you the process of developing redistricting maps is nuanced and fact-specific, requiring the analysis and consideration of a lot of information including indicia of how districts will perform for Black voters, and must be considered in the face of the history and current experiences of Black people in this State, and more. The cover letter we submitted with our proposed House plan on October 8 shares some of the information we have considered in conducting this required analysis for the maps that we proposed to the legislature.

In that letter, we shared specifically that, because of population changes over the last decade, it is undisputed that this Committee must adjust a number of House district boundaries, including in areas where Black voters live, to comply with the text and spirit of federal and state laws and principles like the one person one vote, and non-dilution of Black voting power. Our coalition's proposed map represents one way to do so. Our House plan corrects for population disparities across the state. At the same time, it also preserves districts that, based on an analysis of voting patterns and other indicia, we understand will continue to enable Black voters to elect their preferred candidates whether they form the majority of a district or less than a majority. So, as I understand it, our proposed plan develops 19 majority-minority districts and 16 more districts in which Black voters are between 40-50% that we understand would still be effective; so I'm not sure of the numbers that I've heard from this Committee with respect to our proposal. This is a critical point and shows

this Committee one way to comply with both affirmative obligations under the U.S. Constitution and the text and spirit of Section 2 of the VRA.

Like President Murphy, I am unaware of how this Committee has considered, if at all, the continued pattern of racially polarized voting in statewide and other elections that we have analyzed. President Murphy shared the results of our analysis of the racial bloc voting patterns in the 2020 election for U.S. Senate. As you can understand, the voting patterns in that recent election are probative of voting patterns in areas encompassed in House districts. And our analyses show that similar statewide patterns exist in other recent and relevant elections featuring Black-preferred candidates, such as in the 2018 election for the Secretary of State and 2018 election for State Treasurer. For example, in the 2018 election for Secretary of State, our analysis shows that Melvin Whittenburg, the candidate of choice of Black voters across South Carolina, received only 23% of white voter support and was defeated, despite receiving 95% of Black voter support. In the 2018 election for State Treasurer, Rosalyn Glenn, the candidate of choice of Black votes across South Carolina, received only 21% of white voter support and was defeated, despite receiving 95% of Black voter support.

Based on our analyses, similar patterns also exist at the county-level in most parts of the state for these elections. That is, Black voter-supported candidates have been defeated because of two little white voter support in counties across the state from Anderson and Greenville, to York, to Berkeley, Georgetown, and Charleston.

And it's not only our analyses that document these patterns. Decade after decade, in previous redistricting cycles, Federal courts have recognized these voting patterns along racial lines, as members of this Committee must be aware.

Furthermore, in drawing effective districts across the state, the Committee must not mechanically employ demographic thresholds or, as President Murphy mentioned, "pack" Black voters into districts with unnecessarily high Black populations or "crack" them into districts with populations that are insufficient to provide Black voters with an opportunity to elect their preferred candidates.

Unfortunately, our very preliminary review of the Committee's proposed House redistricting map suggests concerns with your plan.

Specifically, as President Murphy identified, we are looking into whether the Committee's plan cracks or packs communities of interest of Black voters in several areas of the state. We also are looking into whether it needlessly eliminates districts that are currently performing for Black voters. This is troubling, if so, because these potentially dilutive changes are likely not by necessity, but by choice. As I mentioned a moment ago, the House Plan our coalition proposed makes clear that effective performing districts for Black voters can be developed, while correcting for the malapportionment concerns and other issues.

In closing, the House map we have proposed again is not the only conceivable map that could satisfy federal and state criteria; nor does it purport to incorporate all the extensive community input that you continue to receive that is necessary to drafting fair and nondiscriminatory maps. It is an example of a map that we believe merits this Committee's due consideration and incorporates key analyses that should, at minimum, meaningfully inform the assessment and modification of the Committee's proposed map. We will provide written comments highlighting specific areas of concern in the House's proposed map in the coming days. We may also propose an alternative map correcting any of the problems that our analysis of the Committee's proposed map continues to identify.

I appreciate the opportunity to provide these comments. My colleague Somil Trivedi from the ACLU has some additional feedback as well.

Thank you.

ⁱ See *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 557 (2013).