



**Testimony of Brenda Murphy
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**Before the South Carolina House of Representatives
Redistricting Ad Hoc Committee**

Testimony on Proposed House Redistricting Plans

November 10, 2021

Good afternoon, Chair Jordan and members of the Committee. My name is Brenda Murphy, and I am the President of the South Carolina State Conference of the National Association for the Advancement of Colored People (“South Carolina NAACP”). We are a state conference of 77 branches and over 13,000 NAACP members throughout South Carolina.

Thank you for the opportunity to provide information this morning about proposed redistricting plans for the House, a body whose decision-making has *monumental* impact on the lives of South Carolina NAACP members and the other community members that we serve. I am speaking on behalf of the association I lead, as well as a redistricting coalition, which includes the South Carolina NAACP, the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), American Civil Liberties Union (“ACLU”), ACLU of South Carolina, and others. Our coalition formed this spring to focus on redistricting at the state and local levels because these maps can stay in place for at least a decade and determine access to representation and life-changing policies. I am pleased to be joined by Leah Aden of LDF, and Somil Trivedi of the ACLU. Both will be testifying later in this hearing to provide more detail about our coalition’s proposed state House redistricting plans and our very initial observations on the Committee’s proposed House redistricting plan.

My testimony will focus on three points: (1) the affirmative obligations this Committee must consider as it assesses and approves redistricting plans; (2) a few high-level points on the House redistricting plan that our coalition submitted, as well as initial observations on the plan that Committee made public less than two days ago, on November 8; and (3) the importance of more transparency in all stages of redistricting.

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

As explained in our letters, this Committee must ensure that any maps it adopts comply with the Constitution’s “One Person, One Vote” mandate, which requires balanced populations among districts in legislative maps, and Section 2’s “nationwide ban on racial discrimination in voting.”¹

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

As we have made this body well aware in previous correspondence on October 8 and August 9, the 2020 U.S. Census results demonstrate that South Carolina has experienced significant population growth and shifts over the past

decade. These changes require action to bring the districts for the South Carolina House maps into compliance with the “One Person, One Vote” principle. Equal district populations, as our letters have explained, are necessary to ensure access to representation for *all people* and equal electoral power for *all voters*. That means that districts must be close to the “ideal district population,” which is the total population of our state divided by the number of districts in a map. House districts’ populations can vary a small amount from the population “ideal,” but not by more than 10%.ⁱⁱ

Based on 2020 Census data, numerous House districts exceed this range of population deviation; some do so by substantial margins.ⁱⁱⁱ Any map the Committee adopts must correct for this malapportionment, as the House redistricting map that we proposed does.

B. Complying with the U.S. Constitution and Voting Rights Act

According to the 2020 Census, approximately 27% of our State’s people are Black. And, among South Carolinians who are old enough to vote, Black voters make up approximately 29%.

As we have explained in our previous correspondence with this body, to comply with the Voting Rights Act, you must engage in the very fact intensive and robust analysis of whether the maps you propose, consider, and adopt provide Black voters with an equal opportunity to participate in the electoral process and to elect representatives of our choice. In short, this body must do an analysis to ensure that House maps do not minimize our vote.

In some cases, that will require developing single-member districts in which Black voters are a majority to ensure the opportunity to elect Black voters’ preferred candidates.

And in areas where Black voters cannot form the majority in a district, this Committee should consider whether it is possible to draw additional districts that give Black voters an equal and effective opportunity to participate in the political process and elect candidates of their choice. Under the Constitution and VRA, as I understand it, the Committee must not minimize our electoral strength by “packing” Black voters into districts with unnecessarily high Black populations or by “cracking” us into districts with populations that are too low to provide an opportunity to meaningfully participate in the political process and have a say in who is elected.^{iv}

II. Considerations Relevant to Proposed House Maps

In turning to the maps before you for consideration, I will emphasize that developing a constitutionally and legally compliant map requires more than a simple review of the population numbers in each district. In preparing the map we proposed for the South Carolina House, our coalition considered not only population and demographic statistics, but also:

- 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.

Our expectation—and *we would like confirmation from this body*—is that in developing the map that this body proposed, the Committee carefully analyzed all the relevant facts, circumstances, and data.

Indeed, one key form of analysis that this Committee must consider and account for is racial bloc voting. This is a pattern of voting along racial lines in which voters of the same race tend to support the same candidate, who is different from the candidate supported by voters of a different race. Racial bloc voting continues to exist in South Carolina.^v For example, in the 2020 election for U.S. Senate, 98% of Black voters cast their ballots for Jaime Harrison. However, only 25% of white voters cast their ballots for Harrison, and he was defeated. We see a similar trend in other statewide elections, and in local elections in many parts of the State.

As this body must be aware, South Carolina has made some progress in remedying its systems of discrimination, but we aren't there yet. In developing a House plan, we must acknowledge our history and present reality. That includes a record of racial discrimination in voting that continues into the present. Our letters to this Committee have reminded you that this history starts long ago and continues into the present: South Carolina's 1895 Constitution "was a leader in the widespread movement to disenfranchise [eligible Black citizens]."^{vi} During the years when South Carolina voters were protected by federal preclearance "discriminatory changes in voting practices or

procedures in South Carolina” earned over 120 DOJ objections,^{vii} including at least 27 objections to redistricting plans.^{viii} The State consistently deployed discriminatory rules, practices, and redistricting schemes to disenfranchise Black voters.^{ix} This history is especially relevant now, the first redistricting cycle since 1960 in which Section 5 preclearance cannot protect Black South Carolina voters.

And with respect to redistricting, litigation, which the SC NAACP has had to bring during redistricting cycles, has required in each of the last several redistricting cycles, often taking months to resolve. In the 2010 redistricting cycle, for example, the federal district court for the District of South Carolina took nearly four months to adjudicate constitutional claims related to redistricting.^x Similarly, during the 1990 and 2000 redistricting cycles, South Carolina federal court needed nearly six months to draw new plans after the State’s political branches failed to enact new maps, leaving in place the old districts that violated the principle of one-person-one-vote.^{xi}

The map that we submitted addresses constitutional and VRA obligations and is informed by South Carolina’s voting patterns, history, relevant data, and more. This care was necessary to develop maps that ensure all voters have access to representation and Black voting power is not diluted

Now, with respect to this Committee’s proposed House map, I would be remiss if I did not emphasize that we—like the rest of the public—received your map only on Monday, less than 48 hours before this hearing began. Later that same day, you appear to have released a significantly revised version of that map. This gave our coalition’s analysts less than two full days before the start of this hearing to attempt to study your proposal.

That unreasonably rushed timeline, which this Committee chose to impose on its constituents, makes it impossible to provide you with the kind of comprehensive analysis this important map deserves. **Thus, we plan to send you additional written comments on your proposed map in the coming days. We may also propose an alternative map correcting some of the problems our analysis continues to identify in your proposed plan.**

Speaking preliminarily, therefore, we are gravely concerned with what we see. Your plan appears to unnecessarily eliminate districts that formerly provided Black voters a meaningful opportunity to participate in the political

process. This includes both majority-Black districts and effectively performing districts. It is not necessary to eliminate even one of these districts. Our map makes clear that each of them can be maintained—whether as majority-Black districts, or as districts where Black voters, while not a majority, can still be effective in electing candidates of choice based on voting patterns and other facts. You have had our proposed map for over a month. Accordingly, any decision to make ineffective any district serving Black voters raises serious concerns. We are also concerned that your proposed map appears to “crack” Black communities, particularly in Anderson County and South Florence.

These issues raise fundamental questions, to which I would appreciate your answers after my testimony has concluded:

First, has this Committee performed any analysis of racially polarized voting patterns? If so, will the Committee be publicizing the results of that analysis? And how is that analysis reflected in the Committee’s proposed map?

Second, has the Committee considered South Carolina’s history of discrimination against Black voters? If so, how does the map reflect an awareness of that history?

Third, how does the Committee’s proposed map reflect consideration of communities of interest?

III. Transparency During the Redistricting Process

The unreasonably brief time this Committee has given its constituents to review the proposed House map brings me to my final point: the importance of transparency.

If you remember only one thing from my testimony today, let it be this: in redrawing the lines from which you and your colleagues in the House of Representatives are elected, you engage in an undertaking that profoundly impacts all South Carolinians. How districts are drawn affects every issue of concern to Black South Carolinians, like the need for COVID-19 protections, COVID-19 funding relief, moratoriums on evictions, access to low-income housing, equitable healthcare, infrastructure funding, police accountability, hate-crime protections, and jobs that pay living wages, among other issues. The district lines you draw will determine whether we have a voice on these issues, and indeed whether our “precious, almost sacred”^{xii} right to vote is undermined

or protected. These district lines are critical infrastructure for our democracy. They are the foundation upon which our State’s representative process is constructed. For ten years or more, they will channel, enable, and potentially stifle, our voices, and they may dictate the weight of our votes. The right to vote, as the Supreme Court has said, is “the citizen’s link to his laws and government”^{xiii} and “the essence of a democratic society.”^{xiv} I ask you to protect that right—and to do so with an open, transparent, and equitable process.

Transparency and public input are not only just and fair—they are also necessary to ensure this Committee fulfills its obligations to comply with the Constitution, the VRA, and other redistricting concerns.

The House Committee must continue to facilitate this work and provide further opportunities for informed community participation in *all* stages of the redistricting process. In the timing of its map release and meetings this week, the Committee has failed to meet these objectives. Accordingly, the House should revisit its process and ensure sufficient opportunities for informed consideration and public input, including scheduling additional public hearings beyond this Friday.

I appreciate the opportunity to provide these comments during the Committee’s hearing today and look forward to working together with members of this Committee for the people of South Carolina. Leah Aden and Somil Trivedi will provide further commentary on behalf of our coalition, with regard both to the Committee’s map and the plans we have proposed. Thank you.

ⁱ Letter from LDF, et al., to S.C. House of Reps. Jud. Comm. Redistricting Ad Hoc Comm. (Oct. 8, 2021), <https://www.naacpldf.org/wp-content/uploads/Letter-to-H-Redistricting-Ad-Hoc-Comm-Submitting-Congressional-and-House-Maps-10-8-21.pdf>; Letter from LDF, et al., to S.C. House of Reps. Jud. Comm. Redistricting Ad Hoc Comm. (Sept. 27, 2021), https://www.naacpldf.org/wp-content/uploads/Follow-Up-Letter-to-SC-House-Redistricting-Ad-Hoc-Committee.9.27.2021_final.pdf; Letter from LDF, et al., to S.C. House of Reps. Jud. Comm. Redistricting Ad Hoc Comm. (Aug. 30, 2021), <https://www.naacpldf.org/wp-content/uploads/Follow-Up-Letter-to-SC-House-Redistricting-Ad-Hoc-Committee-8-30-21.pdf>; Letter from LDF, et al., to S.C. House of Reps. Jud. Comm. Redistricting Ad Hoc Comm. (Aug. 9, 2021), https://www.naacpldf.org/wp-content/uploads/Letter-to-SC-House-Redistricting-Ad-Hoc-Committee_08.09.2021_final.pdf.

ⁱⁱ See *Reynolds*, 377 U.S. at 568; *Gaffney v. Cummings*, 412 U.S. 735, 744–45 (1973); *Brown v. Thomson*, 462 U.S. 835, 842 (1983).

ⁱⁱⁱ See S.C. House of Representatives, *2020 District Demographics Pre-Draw*, <https://redistricting.schouse.gov/demographicspredraw.html> (select “Current House District Demographics Final Data”) (last visited Nov. 9, 2021).

^v See, e.g., *Colleton Cty. Council*, 201 F. Supp. 2d at 643; see also, e.g., *United States v. Charleston Cty., S.C.*, 365 F.3d 341, 350 (4th Cir. 2004); *Jackson v. Edgefield Cty., S.C. Sch. Dist.*, 650 F. Supp. 1176, 1196 (D.S.C. 1986).

^{vi} *South Carolina v. Katzenbach*, 383 U.S. 301, 319 n.9 (1966).

^{vii} U.S. Department of Justice, *Voting Determination Letters for South Carolina*, <https://www.justice.gov/crt/voting-determination-letters-south-carolina> (last updated: Aug. 7, 2015).

^{viii} *Id.*; John C. Ruoff and Harbert E. Buhl, *Voting Rights in South Carolina 1982-2006*, Southern California Review of Law and Social Justice, Vol. 17(2) 643, 645, 655–57 (2008), https://weblaw.usc.edu/students/journals/rlsj/issues/assets/docs/issue_17/05_%20South_Carolina_Macro.pdf; see 52 U.S.C. § 10304(b).

^{ix} Mark A. Posner, *Current Conditions of Voting Rights Discrimination*, The Leadership Conference on Civil and Human Rights (Aug. 16, 2021), <http://civilrightsdocs.info/pdf/voting/vra/2021/VRAA-2021-StateReport-SouthCarolina.pdf>; LDF, *Democracy Diminished: State and Local Threats to Voting Post Shelby County, Alabama v. Holder*, https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished_-10.06.2021-Final.pdf.

^x *Backus v. South Carolina*, 857 F. Supp. 2d 553 (D.S.C.), *aff'd*, 568 U.S. 801 (2012).

^{xi} *Colleton Cty. Council*, 201 F. Supp. 2d at 618; *Burton v. Sheheen*, 793 F. Supp. 1329, 1337 (D.S.C. 1992), *vacated on other grounds*, 508 U.S. 968 (1993).

^{xiii} *Rep. John Lewis: ‘Your Vote is Precious, Almost Sacred’*, PBS NewsHour (Sept. 6, 2021), <https://www.pbs.org/newshour/show/rep-john-lewis-your-vote-is-precious-almost-sacred>.

^{xiii} *Evans v. Cornman*, 398 U.S. 419, 422 (1970).

^{xiv} *Harman v. Forssenius*, 380 U.S. 528, 537 (1965).