

April 15, 2015

By email & USPS mail

Hon. Shelley Welsch
Mayor of University City, Missouri
6801 Delmar Boulevard – 2nd Floor
University City, MO 63130

mayor@ucitymo.org

Dear Mayor Welsch:

The NAACP Legal Defense and Educational Fund, Inc. (LDF)¹ writes to you at the urging of the Missouri State Conference of the NAACP, the Mound City Bar Association, the Black Leadership Roundtable, and Clergy United. At their request, LDF has been closely investigating the configuration of University City's City Council, which elects six (6) members total from three (3) multi-member wards.² LDF, along with this letter's other signatories, is deeply concerned that the City's current electoral system may violate Section 2 of the Voting Rights Act of 1965, as amended ("Section 2"),³ and the Fourteenth and Fifteenth Amendments of the United States Constitution. We believe that the City's current electoral plan may undermine the opportunity of Black voters in University City to participate equally in the political process and to elect candidates of their choice. Fortunately, the City Council of University City has the power to adopt a more

¹ Since its founding in 1940, LDF has been a pioneer in the struggle to secure and protect the rights of Black people and other people of color in Missouri and elsewhere by using legal, legislative, public education, and advocacy strategies. *See, e.g., Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612 (2013) (LDF defending Section 5 of the Voting Rights Act (VRA) before the Supreme Court); *Missouri v. Jenkins*, 495 U.S. 33 (1990) (LDF successfully suing Missouri to require remedial action in a school desegregation case); *Shelley v. Kraemer*, 334 U.S. 1 (1948) (LDF successfully suing to bar Missouri state courts from enforcing racially restrictive housing covenants).

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

² The list of current University City Council members is available at <http://www.ucitymo.org/index.aspx?NID=452>.

³ 42 U.S.C. § 1973(a) (2000 ed.).

representative method of electing its members⁴ and avoid potentially costly⁵ and lengthy⁶ litigation. We, therefore, write to encourage the City Council to pursue a readily available, fair, and inclusive approach to elections that complies with the Voting Rights Act, the Constitution, and other applicable laws.⁷

The current ward plan for University City's City Council likely violates federal law. Section 2 prohibits voting standards, practices, or procedures that were either enacted with racially discriminatory *intent*, or that have racially discriminatory *results*.⁸ A chief purpose of Section 2 is to prohibit "minority vote dilution," which can occur either "by the dispersal of [B]lack[] [people] into districts in which they constitute an ineffective minority of voters or from the concentration of [B]lack[] [people] into districts where they constitute an excessive majority."⁹ These dilutive practices are referred to as "cracking" and "packing," respectively, and serve to minimize Black voters' influence and their ability to elect candidates of choice.¹⁰

⁴ Redistricting and the creation of additional majority-minority districts are common remedies to discriminatory voting schemes. *See, e.g., Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1022-24 (8th Cir. 2006) (affirming a Section 2 remedial plan that established an additional majority-minority district); *Stabler v. Cnty. of Thurston, Neb.*, 129 F.3d 1015, 1021-24 (8th Cir. 1997) (similar).

⁵ *See, e.g., Voting Rights Act: An Examination of the Scope and Criteria for Coverage Under the Special Provisions of the Act, Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 80, 84-85 (2005) (detailing the actions of Charleston County, South Carolina, which fought, unsuccessfully, to overturn a Section 2 liability finding concerning its at-large electoral system at the cost of *two million dollars* in public funds); *see also* PATRICIA LOMBARD & CAROL KRAFKA, FED. JUDICIAL CTR., 2003-2004 DISTRICT COURT CASE-WEIGHTING STUDY 5-6 tbl. 1 (2005) (finding that voting rights cases consume the sixth most judicial resources out of the sixty-three types of cases analyzed); NAACP LEGAL DEF. & EDUC. FUND, INC., THE COST (IN TIME, MONEY, AND BURDEN) OF SECTION 2 OF THE VOTING RIGHTS ACT LITIGATION (2015), *available at* [http://www.naacpldf.org/files/case_issue/Section 2 of the Voting Rights Act Costs.pdf](http://www.naacpldf.org/files/case_issue/Section%20of%20the%20Voting%20Rights%20Act%20Costs.pdf).

⁶ *See, e.g., 1 Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 101 (2005) ("2 to 5 years is a rough average" for the length of Section 2 lawsuits).

⁷ LDF has successfully litigated numerous Section 2 cases against jurisdictions across the country with dilutive electoral districting systems. *See, e.g., Ga. State Conference of the NAACP v. Fayette Cnty. Bd. of Comm'rs*, 950 F. Supp. 2d 1294 (N.D. Ga. 2013), *rev'd in part and vacated in part on other grounds*, 775 F.3d 1336 (11th Cir. 2015); *Terrebonne Parish NAACP v. Jindal*, No. 14-069, 2014 WL 3586549 (M.D. La. July 21, 2014); *Dillard v. Chilton Cnty. Comm'n*, 615 F. Supp. 2d 1292 (M.D. Ala. 2009).

⁸ 42 U.S.C. § 1973(a).

⁹ *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

¹⁰ *Voinovich v. Quilter*, 507 U.S. 146, 153-54 (1993).

In University City, Black residents and other people of color comprise half of the City's 28,468 voting-age population, but constitute a majority of voters only in Ward III.¹¹ Currently, the sole Black members of the City Council are elected from Ward III, in which the Black voting-age population is over 80 percent.¹² The other two wards have much smaller Black voting-age populations (12.23 percent and 29.65 percent in Wards I and II, respectively). By packing and relegating a large share of the City's Black voting-age population to Ward III, the City Council's electoral plan ensures that voters of color can only effectively elect their candidates of choice in Ward III. Thus, this plan likely dilutes voters of color's voting strength in violation of Section 2.¹³

Moreover, a Missouri statute that requires municipal elections to be held in April every year likely exacerbates the harmful effect of the City's ward configuration.¹⁴ Municipal elections held in April are "likely to draw significantly fewer voters than an election held simultaneously with a general election in November,"¹⁵ including in off-years when Black turnout across St. Louis County is "significantly less" than white turnout.¹⁶ For instance, in the April 2012 municipal

¹¹ U.S. CENSUS BUREAU, *University City (city) Quick Facts*, <http://quickfacts.census.gov/qfd/states/29/2975220.html> (last visited Apr. 15, 2015).

¹² UNIVERSITY CITY, MO., *City Council Contact Info*, <http://www.ucitymo.org/index.aspx?NID=452> (last visited Apr. 15, 2015).

¹³ *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 980, 1052 (D.S.D. 2004) (finding that the packing of voters of color into a single district, where in fact they could have constituted a majority in several, violated Section 2), *aff'd*, 461 F.3d 1011 (8th Cir. 2006); *see also Stabler*, 129 F.3d at 1022-23 (upholding a Section 2 remedy where the creation of a third majority-minority district resulted in less of a disparity in proportional minority representation than the prior plan and more closely approximated substantial minority proportionality).

¹⁴ *See* MO. REV. STAT. 115.121.3 (2014) ("The election day for the election of political subdivision . . . officers shall be the first Tuesday after the first Monday in April each year; and shall be known as the general municipal election day.").

¹⁵ *NAACP v. Hampton Cnty. Election Comm'n*, 470 U.S. 166, 178 (1985) (holding that the Voting Rights Act reaches various election practices, including discriminatory election dates); *see also Harvell v. Blytheville Sch. Dist. No. 5*, 71 F.3d 1382, 1388 (8th Cir. 1995) (en banc) (recognizing the impact of "varying election dates, the number of seats up for election, and the presence or absence of other ballot issues that may draw the electorate to the polls" on limiting the Black community's electoral representation).

¹⁶ *See Corbett v. Sullivan*, 202 F. Supp. 2d 972, 984-85 (E.D. Mo. 2002) (recognizing the discriminatory effect on Black voter turnout of holding St. Louis County Council elections in off-years); *see also* S. REP. NO. 97-417, at 143-144 & n.137 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 316 & n.405 (noting that "off-year elections" are one of the "objective factors" that district courts may consider as indicative of a Section 2 violation given that "'off-year' elections tend to result in disproportionately low voter turn-out among minorities").

election, University City-area turnout was only 14.7 percent,¹⁷ but, in November 2012, turnout was an incredible 73.56 percent.¹⁸ The Missouri law setting annual municipal elections in April likely constitutes “a structural flaw . . . [that] is indicative of [a] Section 2 violation.”¹⁹ The City’s existing ward plan compounds the deleterious effect of that law²⁰ and, along with other structural factors,²¹ serves to undercut the participation of Black voters in the City’s political process.

¹⁷ CITY OF UNIVERSITY CITY, ST. LOUIS COUNTY, MISSOURI, GENERAL MUNICIPAL ELECTION, OFFICIAL FINAL RESULTS, Apr. 3, 2012, <http://www.stlouisco.com/portals/8/docs/document%20library/elections/eresults/el120403/MN77.HTML>.

¹⁸ UNIVERSITY TOWNSHIP, ST. LOUIS COUNTY, MISSOURI, GENERAL ELECTION, OFFICIAL FINAL RESULTS, Nov. 6, 2012, <http://www.stlouisco.com/portals/8/docs/document%20library/elections/eresults/el121106/twnunv.htm>; cf. Brian Schaffner, Wouter Van Erve & Ray LaRaja, *How Ferguson Exposes the Racial Bias in Local Elections*, WASH. POST (Aug. 15, 2014) (demonstrating that April elections depress Black voter turnout relative to white voter turnout in Ferguson), available at <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/08/15/how-ferguson-exposes-the-racial-bias-in-local-elections/>.

¹⁹ *United States v. Village of Port Chester*, 704 F. Supp. 2d 411, 444 (S.D.N.Y. 2010) (“[H]olding local elections at a time when only the most engaged and politically astute citizens—those citizens who feel the most enfranchised—are likely to vote will almost certainly result in the diminished influence of groups who feel generally excluded from the political fabric of the community.”).

²⁰ Low Black turnout and any paucity of Black candidates may result from a sense of futility in participating in a potentially discriminatory system. See *Harvell*, 71 F.3d at 1388 (“[B]lack voters need have only looked at their plurality successes in 1974 and 1975 to realize that they faced a much lower possibility of success under the present [discriminatory] scheme.”); *McMillan v. Escambia Cnty., Fla.*, 748 F.2d 1037, 1045 (5th Cir. 1984) (holding, in response to the defendants’ claim that no Black candidate had run for office in recent years, that “the lack of [B]lack candidates is a likely result of a racially discriminatory system”); *United States v. Marengo Cnty. Comm’n*, 731 F.2d 1546, 1568 (11th Cir. 1984) (“Both Congress and the courts have rejected efforts to blame reduced [B]lack participation on ‘apathy.’”).

²¹ In addition to the potentially discriminatory nature of the electoral method, other voting practices, such as the staggered terms for University City’s City Council members, see UNIVERSITY CITY, MO., MUNICIPAL CODE § 105.010 (1999), likely enhance the discrimination that University City’s Black citizens experience. See, e.g., *Harvell*, 71 F.3d at 1390 (“The majority vote requirement, staggered terms, and at-large structure also tend to suppress minority voters’ influence.”); *Buckanaga v. Sisseton Indep. School Dist. No. 54-5*, 804 F.2d 469, 475 (8th Cir.1986) (“The Supreme Court has held that staggered terms promote the dilution of minority voting strength because they limit the number of seats, create more head-to-head contests between white and minority candidates, which highlight the racial element and minimize the influence of single-shot voting.”).

Higher levels of poverty and unemployment amongst Black residents of University City, as compared to white residents, may further restrict Black voters’ ability to participate equally in the political process. See *Gingles*, 478 U.S. at 69 (“[P]olitical participation by minorities tends to be depressed where minority group members suffer effects of prior discrimination such as inferior education, poor employment opportunities, and low incomes.”); *Harvell*, 71 F.3d at 1390 (“[T]he recognized historic effects of discrimination in the areas of health, employment, and education impact negatively on minority political participation.”). As of 2012, Black residents suffer unemployment (9.6 percent) at about three times the rate of white residents (3.0 percent), and more Black families live in poverty (16.0 percent) than white

The decisions of the City Council have enormous consequences for the Black community and other people of color in University City. For example, the City Council presides over key decisions, including: (1) hiring the city manager, police officers, and other municipal employees; (2) adopting ordinances; (3) drafting the city budget; (4) setting policing priorities; and (5) entering into municipal contracts.²² That the City Council continues to make such varied and critical decisions without the unfettered representation of the City's communities of color is alarming. Indeed, it is precisely *because* dilutive ward configurations, like University City's plan, can act to deny communities of color the ability to effectively exercise their fundamental right to vote²³ that courts have repeatedly struck down such configurations under the Constitution and Section 2.²⁴

The substantial underrepresentation of Black people on University City's City Council, and the potential limitation on their ability to exercise their right to elect candidates of their choice, is of particular concern given the background of stark racial disparities in the City in the law enforcement context. In fact, the Missouri Attorney General's Office reports that Black residents in University City are significantly overrepresented among those people whom police stop, search, and arrest. Black motorists comprise 58.9 percent of University City Police Department stops, despite making up just 40.1 percent of the City's total population.²⁵ The search rate of Black motorists is also disproportionate. While White people who are stopped are searched only 3.2 percent of the time, Black people are searched in 9.6 percent of stops.²⁶ Black motorists who are stopped are nearly ten times more likely to be arrested than stopped White motorists.²⁷

families (4.8 percent). U.S. CENSUS BUREAU, *2008-2012 American Community Survey 5-Year Estimates*, <http://factfinder.census.gov> (last visited Apr. 15, 2015).

²² See CHARTER OF THE CITY OF UNIVERSITY CITY, MO., art. II, § 17; UNIVERSITY CITY, MO., MUNICIPAL CODE § 110.010.

²³ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

²⁴ See, e.g., *LULAC v. Perry*, 548 U.S. 399, 436-442 (2006) (holding that the defendant State violated Section 2 by cracking a community of color to take away its opportunity to elect a candidate of choice); *Gingles*, 478 U.S. at 34 (“[T]he use . . . of multimember districts in five North Carolina legislative districts violated [Section] 2 by impairing the opportunity of [B]lack voters to participate in the political process and to elect representatives of their choice.”) (quotation marks and citation omitted); *Stabler*, 129 F.3d at 1021-23 (holding that the failure to create a third majority-minority district despite an increase in the voter of color population indicated that the defendant city had “maintained its current districting system with a discriminatory intent” in violation of Section 2); *Perkins v. City of West Helena, Ark.*, 675 F.2d 201, 215 (8th Cir. 1982) (holding that the defendant city's refusal to reapportion “to insure proportionate representation for the citizens of the two ‘black’ wards [is] evidence [that] is probative of a finding that [the city's electoral] system is being maintained for a discriminatory purpose”), *aff'd*, 459 U.S. 801 (1982).

²⁵ MISSOURI ATTORNEY GENERAL'S OFFICE, VEHICLE STOPS REPORT (2013), *available at* <https://ago.mo.gov/docs/default-source/public-safety/2013agencyreports.pdf?sfvrsn=2>.

²⁶ *Id.*

²⁷ *Id.*

Recently, in concluding that officials in nearby Ferguson had engaged in patterns of egregious unlawful and discriminatory conduct, the U.S. Department of Justice (DOJ) found substantially similar racial disparities in the stopping, searching, and ticketing of Black motorists.²⁸ The DOJ observed that these and other racial disparities had the harmful effect of “sow[ing] deep mistrust between parts of the community and the police department, [thus] undermining law enforcement legitimacy among African Americans in particular.”²⁹ Importantly, in addition to finding that these racial disparities in law enforcement practices had a discriminatory effect in violation of federal civil rights law,³⁰ the DOJ concluded that Ferguson’s persistent failure to address these racial disparities, among other things, established that Ferguson had engaged in intentional racial discrimination, in violation of the Fourteenth Amendment.³¹

The magnitude of these violations was such that, in the wake of the DOJ report, Ferguson’s City Manager, Chief of Police, and Municipal Judge all resigned within days of the report’s release.³² Moreover, recognizing that “[e]xtraordinary action is warranted in Ferguson,” the Supreme Court of Missouri intervened by assigning a judge of the Missouri Court of Appeals to handle all cases pending in the Ferguson municipal court.³³ The Court acknowledged that the practices of Ferguson’s municipal court had undermined “public trust and confidence,” and that reforms were needed “to ensure that the rights of defendants are respected and to help restore the integrity of the system.”³⁴

While the DOJ’s report focused on the practices of Ferguson’s police department and its municipal court, it did not by any means shield the Ferguson City Council from scrutiny. The report noted that Ferguson’s City Manager, who supervises the Ferguson Police Department,

²⁸ See U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 4 (2015), available at http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [hereinafter DOJ REPORT].

²⁹ *Id.* at 2.

³⁰ *Id.* at 69-70 (concluding that the practices violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the Safe Streets Act of 1968, 42 U.S.C. § 3789d).

³¹ *Id.* at 70, 76-78.

³² See John Eligon, *Ferguson Police Chief Thomas Jackson Joins Exodus of City Officials*, N.Y. TIMES, Mar. 11, 2015, available at <http://www.nytimes.com/2015/03/12/us/police-chief-joins-exodus-in-ferguson.html>.

³³ Press Release, Supreme Court of Missouri, Supreme Court of Missouri Reassigns Ferguson Municipal Division Cases (Mar. 9, 2015), available at <http://www.courts.mo.gov/pressrel.nsf/3966cdf827e0d8d7862565ec00679fb1/7f70e2b78919dca486257e030077b4ec?OpenDocument>.

³⁴ *Id.*

reports to and is hired by the City Council.³⁵ Similarly, the Municipal Judge in Ferguson is nominated by the City Manager and elected by the City Council.³⁶ And, finally, the report demonstrated that the Ferguson City Council played an instrumental role in “set[ting] maximizing revenue as the priority for Ferguson’s law enforcement activity,” which exacerbated the racial biases in Ferguson’s law enforcement and municipal court practices.³⁷ The recent decision of the Ferguson City Council to accept the resignation of the City Manager underscores the central role that it plays in all aspects of the city’s governance.³⁸

The City Council of University City should be mindful of the significance of this report. Attorney General Eric Holder noted that the DOJ’s report is “only the beginning” of a reform process in which the DOJ will engage not only with Ferguson, but also with “surrounding municipalities” on these issues.³⁹ The need “to promote reconciliation, to reduce and eliminate bias, and to bridge gaps and build understanding” is not “confined to any one city.”⁴⁰ It extends to “every community across the United States,” including University City.⁴¹ As Vanita Gupta, the Acting Assistant Attorney General for the DOJ’s Civil Rights Division, stated, “[i]t would be a mistake for any of [the] neighboring jurisdictions to fold up their hands. They should absolutely take note of this report.”⁴²

Because University City shares some of the striking racial disparities that led the DOJ to conclude that Ferguson city officials had violated the Constitution and federal civil rights laws, we urge the City Council to embrace this important opportunity to proactively address the City’s

³⁵ DOJ REPORT at 7.

³⁶ *Id.* at 8.

³⁷ *Id.* at 9; *see also id.* at 10 (“City, police, and court officials for years have worked in concert to maximize revenue at every stage of the enforcement process.”); *id.* (noting a February 2011 report requested by the City Council regarding maximizing fine collections through the municipal court system); *id.* at 13 (discussing a March 2012 report regarding fine collections that the City Manager relayed to the City Council).

³⁸ *See* John Eligon, *Ferguson City Manager Cited in Justice Department Report Resigns*, N.Y. TIMES, Mar. 10, 2015, available at <http://www.nytimes.com/2015/03/11/us/ferguson-city-manager-resigns.html>.

³⁹ Eric Holder, U.S. Attorney Gen., Update on Investigations in Ferguson, Missouri (Mar. 4, 2015), <http://www.justice.gov/opa/speech/attorney-general-holder-delivers-update-investigations-ferguson-missouri>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Campbell Robertson, Shaila Dewan & Matt Apuzzo, *Ferguson Became Symbol, But Bias Knows No Border*, N.Y. TIMES, Mar. 7, 2015, available at <http://www.nytimes.com/2015/03/08/us/ferguson-became-symbol-but-bias-knows-no-border.html>.

interrelated issues of racial discrimination.⁴³ The first part of this process includes adopting a method of election for the City Council that is fair and does not have the potential to dilute the voting strength of the City's Black community and other communities of color. Importantly, even without litigation, the City Council has the statutory authority and legal obligation to work expeditiously to address these nascent issues of inadequate and unequal representation that we have identified in this letter.

We, therefore, urge the City Council, under your leadership, to work jointly with LDF, the Missouri NAACP, the Mound City Bar Association, the Black Leadership Roundtable, and Clergy United to work toward becoming a more equitable and inclusive body and to ensure that voters of color are not being denied the equal opportunity to elect the candidates of their choice. Such cooperation could bring the City into compliance with the Constitution, Section 2, and all other applicable laws and avoid the prospect of future costly and lengthy litigation.⁴⁴

We welcome the opportunity to meet with you *in-person* to work cooperatively to resolve this important matter. Please respond to this letter *in writing* by **May 1, 2015** with a proposed meeting date. More generally, feel free to contact Deuel Ross or Victorien Wu directly by phone at (212) 965-2200 or email at dross@naacpldf.org or vwu@naacpldf.org with any questions.

Sincerely,



Sherrilyn Ifill
Christina Swarns
Deuel Ross
Victorien Wu
NAACP LEGAL DEFENSE
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CC (via email): Terry Crow, Councilmember – 1st Ward, terry@ctlaw.net
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⁴³ Cf., e.g., Valerie Schrepf Hahn, *Ferguson Proposes Municipal Court Reforms, Adding Police Review Board*, ST. LOUIS DISPATCH, Sept. 8, 2014, available at http://www.stltoday.com/news/local/govt-and-politics/ferguson-proposes-municipal-court-reforms-adding-police-review-board/article_bfb4e505-527f-5f70-bab9-1e41a5b2380e.html.

⁴⁴ Indeed, a recent lawsuit has challenged the method of electing the members of the Ferguson-Florissant School District Board of Education. See Editorial, *Race and Voting Rights in Ferguson*, N.Y. TIMES, Jan. 4, 2015, available at <http://www.nytimes.com/2015/01/05/opinion/race-and-voting-rights-in-ferguson.html>.

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