From: Arielle McTootle <amctootle@naacpldf.org>
Sent: Friday, February 4, 2022 8:02 PM
To: Sen. & Gov Affairs Cmte; House & Governmental Affairs
Cc: Michael Pernick; Jared Evans
Subject: Written Submission - Congressional Redistricting
Attachments: 2022.2.4 Letter in Opposition to HB1 SB5 SB20.pdf

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Good evening,

Attached is a written submission regarding congressional redistricting for distribution to the House and Senate Committees on Governmental Affairs, submitted on behalf of the NAACP Legal Defense & Educational Fund, the ACLU Voting Rights Project, American Civil Liberties Union Foundation of Louisiana, Louisiana State Conference of the NAACP, and Power Coalition for Equity and Justice. Please feel free to reach out to me, Michael Pernick (mpernick@naacpldf.org), or Jared Evans (jevans@naacpldf.org) with any questions.

Sincerely,
Arielle McTootle

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LDF
DEFEND EDUCATE EMPOWER

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Exhibit
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Sent Via Email

February 4, 2022

Senate and Governmental Affairs Committee
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House and Governmental Affairs Committee
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Re: Proposed Congressional Plans HB1, SB5, and SB20 Run Afoul of Section 2 of the Voting Rights Act of 1965

Dear Chair Stefanski, Chair Hewitt, and Other Members of the House and Senate Governmental Affairs Committees:

The NAACP Legal Defense and Educational Fund, Inc. ("LDF"), the ACLU Voting Rights Project, American Civil Liberties Union Foundation of Louisiana, Louisiana Justice Institute, Louisiana State Conference of the NAACP, and Power Coalition for Equity and Justice write in opposition to HB1, SB5, and SB20.[1] Each of these proposals contravene

[1] *See* H.B. 1, 1st Spec. Sess. (La. 2022), https://www.legis.la.gov/legis/ViewDocument.aspx?d=1244898; S.B. 5, 1st Spec. Sess. (La. 2022), https://www.legis.la.gov/legis/ViewDocument.aspx?d=1244878; S.B. 20, 1st Spec. Sess. (La. 2022), https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1245146. We understand that additional congressional maps continue to be introduced and block equivalency files are not yet available for every map. Therefore, this may not be a complete list of the current proposals that fail to comply with Section 2.

Section 2 of the Voting Rights Act of 1965 ("Section 2") because they fail to provide Black voters with an equal opportunity to participate in the political process and elect candidates of their choice.[2] As such, we strongly urge you to reject these proposals and consider some of the alternative proposals that would not violate Section 2, including, among others, HB5, HB8, HB9, HB12, SB2, SB4, SB6, SB9, SB10, SB11, and SB18.[3]

I. HB1, SB5, and SB20 Perpetuate Severe Under-Representation of Black Voters in Louisiana's Congressional Delegation

If HB1, SB5 or SB20 are enacted, Black Louisianans will continue to be severely under-represented in Louisiana's congressional map. Like the current congressional configuration, these proposals only provide one district in which Black voters have any opportunity to elect candidates of their choice. As a result, Black Louisianans—who comprise over 33% of Louisiana's population[4] —would only have an opportunity to elect candidates of their choice in one out of six (16.7%) of Louisiana's congressional districts in each of these proposals. Similarly, Louisiana's white population would be dramatically overrepresented: only 58% of Louisiana's population is non-Hispanic white,[5] but the candidates preferred by white voters would generally prevail in five out of six (83.3%) districts in each of these proposals.

II. HB1, SB5, and SB20 Contravene Section 2 of the Voting Rights Act.

HB1, SB5, and SB20 clearly satisfy the test established by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986). Our October 18, 2021, letter includes an extensive overview of the three *Gingles* preconditions and the totality of circumstances factors that

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2 *Thornburg v. Gingles*, 478 U.S. 30, 34 (1986).

3 *See* H.B. 5, 1st Spec. Sess. (La. 2022), https://legis.la.gov/legis/ViewDocument.aspx?d=1245583 H.B. 8, 1st Spec. Sess. (La. 2022), https://legis.la.gov/legis/ViewDocument.aspx?d=1245612, H.B. 9, 1st Spec. Sess. (La. 2022), https://legis.la.gov/legis/ViewDocument.aspx?d=1245638; HB12, 1st Spec. Sess. (La. 2022), https://legis.la.gov/legis/ViewDocument.aspx?d=1245740 ;S.B. 2, 1st Spec. Sess. (La. 2022), https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1244872; S.B. 4, 1st Spec. Sess. (La. 2022), https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1244876; S.B. 6, 1st Spec. Sess. (La. 2022), https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1244880; S.B. 9, 1st Spec. Sess. (La. 2022), https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1245001; S.B. 10, 1st Spec. Sess. (La. 2022), https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1245003; S.B. 11, 1st Spec. Sess. (La. 2022), https://www.legis.la.gov/Legis/BillInfo.aspx?i=241496; S.B. 18, 1st Spec. Sess. (La. 2022), https://www.legis.la.gov/Legis/BillInfo.aspx?i=241506. These bills include versions of the maps submitted to the Committees on October 18, 2021, by a coalition of organizations, including the undersigned. *See LDF Sends Letter to Louisiana House and Senate Governmental Affairs Committees on their Obligation to Comply with Section 2 of the Voting Rights Act During Redistricting* (Oct. 18, 2021), https://www.naacpldf.org/press-release/ldf-sends-letter-to-louisiana-house-and-senate-governmental-affairs-committees-on-their-obligation-to-comply-with-section-2-of-the-voting-rights-act-during-redistricting/.

4 *U.S. Census Bureau QuickFacts*, United States Census Bureau, https://www.census.gov/quickfacts/fact/table/LA/POP010220#POP010220 (last visited Sep. 10, 2021). According to 2020 Census data, the total number of Black Louisiana residents over the age of 18 (also known as the Black voting age population, or BVAP) has increased by 4.4 percent since 2010.

5 *Id.*

govern the Section 2 analysis.[6] For the reasons explained below, if the legislature enacts any of these proposed plans, each of the three *Gingles* preconditions would be satisfied, and there is overwhelming evidence that under the totality of circumstances, Black voters have less opportunity than other members of the electorate to participate in the political process and elect candidates of their choice.[7]

a. *Gingles* Precondition One: It Is Possible to Draw a Congressional District Map with Two Majority-Minority Opportunity Districts.

If HB1, SB5, or SB20 are enacted, the first *Gingles* precondition would be satisfied because it is beyond question that Louisiana's Black population is sufficiently large and geographically compact to constitute a majority of voters in a second congressional district.[8] There are numerous alternative congressional maps that have already been introduced during this special session that provide for a second majority-Black district that contains communities of interest of importance to Black voters, thus proving that the first *Gingles* precondition would be satisfied. For example, we suggest that you consider proposed congressional plans HB5, HB8, HB9, HB12, SB2, SB4, SB6, SB9, SB10, SB11, and SB18, each of which present alternative configurations that would comply with Section 2.

All of these proposals are more compact than HB1, SB5, and SB20 on at least on at least two of the three widely recognized statistical measures of compactness. In particular, some of the proposals, including HB5, HB8, HB9, SB2, SB6, SB9, SB10, and SB11, are more compact than HB1, SB5, and SB20 on all three measures of compactness.

b. *Gingles* Preconditions Two and Three: Louisiana Elections Reflect Racially Polarized Voting Patterns.

There is overwhelming evidence that the second and third *Gingles* preconditions will be satisfied if HB1, SB5, or SB20 are enacted. Based on a preliminary analysis of these proposals, we have confirmed that candidates preferred by Black voters would usually be defeated by candidates preferred by white voters by overwhelming margins in five of the six districts. This analysis is consistent with Louisiana's well-documented history and ongoing record of racially polarized voting in elections across the state.[9] For example, over the past three decades, numerous federal courts have found that racially polarized voting pervades

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6 We urge you to refer to our October 18, 2021, letter for a summary of the legal standard established in *Gingles*. *See supra* note 3, Section II.

7 *Gingles*, 478 U.S. at 36-37 (quoting 42 U.S.C. § 10301(b)).

8 The first *Gingles* precondition is satisfied when an alternative districting plan can be drawn that includes one or more single-member districts in which the minority community is sufficiently large and geographically compact to constitute a majority in the district. *Gingles*, 478 U.S. at 50-51.

9 The second and third *Gingles* preconditions are satisfied when 1) the minority group is politically cohesive in its support for its preferred candidates, and 2) 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. *Id.* at 51. Together, these preconditions are commonly referred to as racial bloc or racially polarized voting. In a racially polarized election, for example, Black people vote together for their preferred (frequently Black) candidate, and most non-Black voters vote for the opposing (typically white) candidate.

Louisiana's statewide and local elections.[10] Additionally, in the past two decades—including as recently as this year—the Department of Justice (DOJ) has sued local parishes under Section 2 three times; in each case, the DOJ identified racially polarized voting patterns within the parish.[11]

c. Totality of Circumstances: Louisiana's Voters of Color Have Less Opportunity to Elect Candidates of Their Choice.

If HB1, SB5, or SB20 are enacted, Black voters will be denied an equal opportunity to elect candidates of their choice under the totality of circumstances.[12] As explained in detail

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10 A district court recently found that there was sufficient preliminary evidence of racially polarized voting statewide to support plaintiffs' challenge to Louisiana's Supreme Court district map. *Louisiana State Conference of NAACP v. Louisiana*, 490 F. Supp. 3d 982, 1019 (M.D. La. 2020). In *St. Bernard Citizens For Better Government*, the district court found racially polarized voting patterns in statewide gubernatorial elections, as well as local parish elections. *St. Bernard Citizens For Better Gov't*, 2002 WL 2022589, at *7 (E.D. La. Aug. 26, 2002). *See, e.g., Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 436-37 (M.D. La. 2017), *rev'd on other grounds sub nom. Fusilier v. Landry*, 963 F.3d 447 (5th Cir. 2020) (The district court found that there were racially polarized voting patterns in the parish's judicial elections, and although the Fifth Circuit reversed the district court's decision, it held that the district court did not err in its finding of racially polarized voting); *Citizens for a Better Gretna v. City of Gretna*, 636 F. Supp. 1113, 1124 (E.D. La. 1986); *Major v. Treen*, 574 F. Supp. 325, 337 (E.D. La. 1983) (The court held that there was racial polarization in Orleans Parish).

11 Most recently, in 2021, the DOJ sued the City of West Monroe under Section 2 over its at-large alderman elections. The DOJ contended that there was racially polarized voting sufficient to satisfy *Gingles* because "[i]n contests between Black candidates and White candidates for West Monroe Board of Alderman and other parish, state, and federal positions, White voters cast their ballots sufficiently as a bloc to defeat the minority's preferred candidate." The court agreed and entered a consent decree between the parties. *United States v. City of West Monroe*, No. 21-cv-0988 (W.D. La. Apr. 14, 2021); *see also United States v. City of Morgan*, No. 00-cv-1541 (W.D. La. Aug. 17, 2000) ("Racially polarized voting patterns prevail in elections for the City Council of Morgan City. In contests between [B]lack and white candidates for City Council, [B]lack voters consistently vote for [B]lack candidates and white voters vote sufficiently as a bloc to usually defeat the [B]lack voters' candidates of choice."); *Greig v. City of St. Martinville*, No. 00-cv-00603 (W.D. La. Jun. 3, 2000) (The DOJ asserted that "[e]lections in the City of St. Martinville are racially polarized").

12 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 state or political subdivision uses voting practices that may enhance the opportunity for discrimination; (4) whether minority candidates have access to candidate slating processes; (5) the extent to which minority 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 minority people have been elected to public office; (8) whether elected officials are responsive to the needs of minority residents; and (9) whether 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.

in our October 18, 2021, letter, many of the congressionally delineated "Senate Factors" strongly indicate that vote dilution is occurring in contravention of Section 2.[13]

III. The Louisiana State Legislature Can Avoid Violating Section 2 By Enacting a Map with Two Majority-Black Districts.

For the reasons explained above, the congressional maps proposed in HB1, SB5, and SB20 disregard the mandates of Section 2. As we have repeatedly reminded you, the Louisiana State Legislature has an affirmative obligation to comply with Section 2 of the Voting Rights Act. You have been presented with a significant number of proposals, including but not limited to HB5, HB8, HB9, HB12, SB2, SB4, SB6, SB9, SB10, SB11, and SB18, that would comply with Section 2 by including a second majority-Black district.[14] As such, we strongly urge you to consider one of the proposed bills that include a second majority-Black district.

Please feel free to contact LDF Redistricting Counsel Michael Pernick at (917) 790-3597 or by email at mpernick@naacpldf.org with any questions or to discuss these issues in more detail.

Sincerely,

/s/ Michael Pernick

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[13] Our October 18, 2021, letter provides further detailed examples of Senate Factor evidence demonstrating that Black voters have not had an equal opportunity to participate in the political process in Louisiana. *See supra note* 3, Section III.c.

[14] Indeed, the Legislature has been on notice since 2019 that a map with only one majority-Black district may violate Section 2, when a court held that a Section 2 challenge to Louisiana's current congressional districts—alleging, among other things, that an additional majority-Black district could be developed—was credible enough to survive a motion to dismiss. *Johnson v. Ardoin*, No. 18-cv-00625, 2019 WL 2329319 (M.D. La. May 31, 2019). Moving forward with a map that fails to include a second majority-Black district with knowledge of the harm caused to Black voters may evince an intent to discriminate and could provide grounds for relief under Section 3 of the Voting Rights Act. *See Texas All. for Retired Americans v. Hughs*, 489 F. Supp. 3d 667, 691–92 (S.D. Tex. 2020) (citing *U.S. v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009)) ("In considering a discriminatory intent claim under Section 2, the Court considers the Arlington-Heights factors along with the Gingles factors."); *Pers. Adm'r of Massachusetts v. Feeney*, 442 U.S. 256, 279 (holding that discriminatory purpose "implies that the decisionmaker, in this case a state legislature, selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group"). Section 3(c) of the Voting Rights Act remains an avenue for federal courts to "bail in" or order jurisdictions to obtain preclearance for voting changes from the Attorney General or federal court. 52 U.S.C. § 10302(c). *See e.g., Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 729 (S.D. Tex. 2017) (requiring the City of Pasadena to submit future changes to its electoral map and plan to the Department of Justice for preclearance under Section 3(c) after finding that city officials had intentionally discriminated against Latino voters to dilute their voting strength).

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CC: Office of Governor John Bel Edwards

NAACP Legal Defense and Educational Fund, Inc. ("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 the areas of education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that prohibit voter discrimination, intimidation, and suppression and increase access to the electoral process.

American Civil Liberties Union Foundation

For 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties guaranteed by the Constitution and laws of the United States. Whether it's ending mass incarceration, achieving full equality for the LGBT community, advancing racial justice, establishing new privacy protections for our digital age, or preserving the right to vote or the right to have an abortion, the ACLU takes up the toughest civil liberties and civil rights cases and issues to defend all people from government abuse and overreach. With more than one million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, gender identity or expression, age, disability, national origin, and record of arrest or conviction.

American Civil Liberties Union Foundation of Louisiana

The ACLU of Louisiana has worked to advance and preserve the individual rights and liberties guaranteed by the Constitution and laws of the United States and the State of Louisiana since 1956. The organization is part of a nationwide network of ACLU affiliates that fight tirelessly in all 50 states, Puerto Rico, and Washington, D.C.

Louisiana Justice Institute

Louisiana Justice Institute is a non-profit civil rights legal advocacy organization and law firm that fosters and supports social justice campaigns across Louisiana to protect the rights of Black communities. Since its founding in 2007, LJI has been involved in numerous campaigns, impact litigation, and social justice advocacy involving – but not limited to – immigrant rights, housing rights, education rights (including special education advocacy and litigation), voting rights, and environmental litigation.

Louisiana NAACP State Conference

Louisiana State Conference of the National Association for the Advancement of Colored People (the "Louisiana NAACP State Conference") is a state subsidiary of the National Association for the Advancement of Colored People, Inc. For decades, the Louisiana NAACP

State Conference has worked towards its mission to ensure the political, educational, social, and economic equality of all persons and to eliminate race-based discrimination.

Power Coalition for Equity and Justice

The Power Coalition for Equity and Justice works to build voice and power in traditionally ignored communities. We are a coalition of groups from across Louisiana whose mission is to organize in impacted communities, educate and turn out voters, and fight for policies that create a more equitable and just system in Louisiana.