



400 Washington Avenue
Montgomery, AL 36104
T 334.956.8200 F 334.956.8481
www.splcenter.org

Sent via email

November 17, 2021

Mayor Sandy Stimpson
Mobile City Council
205 Government Street
Mobile, AL 36602

Re: Compliance with Section 2 of the Voting Rights Act in Redistricting & Annexation

Dear Mayor Stimpson and Mobile City Council Members:

On behalf of concerned residents of the city of Mobile, the Southern Poverty Law Center (“SPLC”) writes to remind the Mayor and the Mobile City Council to take seriously their affirmative obligation to comply with Section 2 of the Voting Rights Act (“Section 2”) during the upcoming redistricting cycle. Specifically, we remind you that Section 2 may (1) require enacting a map with a majority of districts comprised of a majority of Black voters (“majority-Black districts”) and (2) prohibit annexation of population into the city that would dilute the political power of minority voters.

Mobile voters elect seven City Council members from single-member districts. Ala. Code § 11-44C-13. The City Council holds all legislative powers of the city, including those enumerated by local law. *See* Ala. Code. § 11-44C-21. As confirmed in the 2020 Census, Mobile is a majority-Black and majority-minority city. Specifically, the city is 40.8% white and 59.2% people of color (which includes 51.3% Black residents). When looking at voting-age population, the city is 44.4% white and 55.6% people of color (which includes 48.4% Black voting-age population). Even though Mobile is a majority-Black and majority-people of color city, there are only three Black City Council members (out of seven). Based on demographics alone, Mobile’s Black community is underrepresented on the City Council.

Redistricting Must Comply with Section 2 of the Voting Rights Act

Under Alabama law, the City Council must reapportion its districts following each decennial federal census. As established in the Zoghby Act of 1985, within six months of the publications of the federal census, the mayor shall file with the council a report containing a recommended plan for the reapportionment of the council district boundaries. Ala. Code § 11-44C-90. The city council must then enact a redistricting ordinance within six months after receiving the mayor’s report. *Id.* Failing this, the plan submitted by the mayor becomes effective without enactment by the city council. *Id.* Any redistricting plan proposed by the mayor or adopted by the city council must comply with the following specifications:

- a. Each district shall be formed of contiguous, and to the extent reasonably possible, compact territory, and its boundary lines shall be the centerlines of streets or other well-defined boundaries.
- b. Each district shall contain as nearly as is reasonable the same population.

Ala. Code § 11-44C-90. The U.S. Census Bureau conducted the decennial census in 2020 and released the data necessary to fulfill this obligation on August 12, 2021.

The Mayor and City Council also have an obligation to ensure that the city council map complies with the Voting Rights Act. Section 2 of the Voting Rights Act, specifically, requires lawmakers engaging in redistricting to ensure that voters of color have an equal opportunity “to participate in the political process and elect candidates of their choice,” taking into consideration the state or locality’s demographics, voting patterns, and other circumstances. *See Thornburg v. Gingles*, 478 U.S. 30, 34 (1986). A key aim of Section 2 is to prohibit minority vote dilution at all levels of government, including in local elections such as city council, school board, and county commission elections.

A district map may violate Section 2 when it dilutes the voting power of voters of color, including by “packing” Black voters into districts where they constitute an excessive majority and depriving them of the ability to elect their candidates of choice in other districts. Section 2 prohibits minority vote dilution regardless of whether a plan was adopted with a discriminatory purpose. *Gingles*, 478 U.S. at 35. What matters under Section 2 is the effect of the redistricting plan on the opportunity of voters of color to elect candidates of their choice.

The U.S. Supreme Court has established the following three “*Gingles* preconditions” for evaluating vote dilution under Section 2: whether (1) an illustrative districting plan can be drawn that includes an additional district in which the minority community is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the minority group is politically cohesive in its support for its preferred candidates; and (3) in the absence of majority-minority districts, candidates preferred by the minority group would usually be defeated due to the political cohesion of white voters in support of different candidates. *Id.* at 50-51. Together, the second and third *Gingles* preconditions are commonly referred to as racial bloc or racially polarized voting. 52 U.S.C. § 10301(b).

After a plaintiff establishes the three *Gingles* preconditions, a “totality of circumstances” analysis is conducted to determine whether minority voters “have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C.A. § 10301.¹

¹ *See also LULAC v. Perry*, 548 U.S. 399, 425 (2006). 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 Parish uses voting practices that may enhance the opportunity for discrimination; (4) whether Black candidates have access to candidate slating processes; (5) the extent to which Black 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 Black people have been elected to public office; (8) whether elected officials are responsive to the needs of Black residents; and (9) whether the policy underlying the voting plan is tenuous. *Id.* at 36-37. But “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. The Court has also explained that “proportionality is ‘a relevant fact in the totality of circumstances’” analysis. *LULAC*, 548 U.S. at 436 (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1000 (1994)). This factor asks whether “minority voters form effective voting majorities in a number of districts roughly proportional to the minority voters’ respective shares in the voting-age population.” *De Grandy*, 512 U.S. at 1000. Nor is the district court limited to considering only these factors; the list is “neither comprehensive nor exclusive.” *Ga. State Conference of the NAACP v. Fayette Cty. Bd. of Comm'rs*, 775 F.3d 1336, 1342 (11th Cir. 2015) (quoting *Gingles*, 478 U.S. at 45). And 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.* (quoting *Gingles*, 478 U.S. at 45).

As noted above, Mobile is not a majority-white city; indeed, Mobile’s population is majority people of color, and a majority of its voting-age population is voters of color. A city council map with four districts containing majority white voting-age population (VAP) would likely violate Section 2 of the Voting Rights Act because it would serve to dilute the political power of Mobile’s voters of color, including the city’s Black voters. A redistricting plan that packs Mobile’s voters of color into three city council districts, thereby depriving those voters equal access to the political process such that they cannot elect representatives of their choice, would likely subject the city to legal challenge.

Each of the three *Gingles* preconditions are likely satisfied in Mobile, and there is substantial evidence that under the totality of the circumstances, Black voters have less opportunity than other members of the electorate to participate in the political process and elect candidates of their choice in Mobile. My team at SPLC is available to discuss how the Mayor and City Council can draw districts to ensure that Section 2 is not violated and Mobile’s voters of color are not unlawfully excluded from the political process.

Annexation of Significant White Population into the City of Mobile Likely Violates Section 2 of the Voting Rights Act

As the Mayor and City Council consider measures such as annexation, we urge careful consideration of the obligations under the Voting Rights Act and the complex relationship between annexation and racial discrimination in voting. As detailed in a [report SPLC recently submitted to Congress](#), annexation has long been a tool to dilute the political power of Black voters and communities in the Deep South.² In Alabama, when Section 5 of the Voting Rights Act was in effect between 1965 and 2013, the U.S. Department of Justice objected to scores of proposed annexations around the state because they would have the effect (and sometimes the purpose) of diluting minority voting strength in the jurisdiction. *See* U.S. Dep’t of Justice, Voting Determination Letters for Alabama, <https://www.justice.gov/crt/voting-determination-letters-alabama>.

Annexation is a change in voting practice or procedure subject to challenge under Section 2 of the Voting Rights Act, which is consistent with Congress intending the VRA to have “the broadest possible scope.” *See City of Pleasant Grove v. United States*, 479 U.S. 462, 467 (1987) (citations omitted); *see also id.* (“Annexation is a change in voting practice or procedure subject to coverage under section 5 of the Voting Rights Act.”). Further, even if the City Council has a race neutral justification for annexing land with substantial white population into the city, such action can nevertheless constitute a Section 2 violation. As noted above, what matters in analyzing a Section 2 violation is the *effect* of the change on Black voters’ opportunity to elect candidates of choice. Because Mobile is a majority-Black and majority-minority city, action by the City Council that annexes land with white population—while failing to annex land that

² Southern Poverty L. Ctr., *Selma, Shelby County, & Beyond: Alabama’s Unyielding Record of Racial Discrimination in Voting, the Unwavering Alabamians Who Fight Back, & the Critical Need to Restore the Voting Rights Act* (Aug. 2021), https://www.splcenter.org/sites/default/files/splc_alabama_voting_rights_report_with_exhibits_final.pdf. For example, in 1987, the U.S. Supreme Court in *City of Pleasant Grove v. United States* rejected the city’s long efforts to resist integration through selective annexation. The city had sought a declaratory judgment to annex white residents, who aimed to avoid a desegregated school district in neighboring Jefferson County. *City of Pleasant Grove v. United States*, 479 U.S. 462, 465-66 (1987). The city also sought to annex an empty parcel of land that would be developed into an exclusively white, upper-income community. At the same time, the city refused to annex two predominantly Black areas. After a federal court denied the city’s requests, the city appealed to the Supreme Court, which agreed with the lower court. In holding that the city’s efforts violated the VRA, the Court reasoned that “[t]o provide for the growth of a monolithic white voting bloc, thereby effectively diluting the black vote in advance . . . is just as impermissible a purpose as the dilution of present black voting strength.” *Id.* at 472.

includes comparable Black population—would likely violate Section 2 because it would dilute the voting strength of the Black community and Black voters’ opportunity to elect candidates of choice.

For the reasons explained above, the Mayor and City Council must consider their obligations under the Voting Rights Act, including whether the City Council must adopt a redistricting plan with at least four majority-Black or majority-minority districts and refrain from annexing population into the city that would serve to dilute the political power of communities of color. Failure to comply with Section 2 of the Voting Rights Act may lead to unnecessary—and costly—litigation.³ We urge the Mayor and City Council to ensure non-dilution of minority voting strength in Mobile. We are happy to provide the Mayor and City Council with additional details and technical assistance regarding compliance with Section 2 and the U.S. Constitution.

Please feel free to contact me at (334) 235-8708 or caren.short@splcenter.org with any questions or to discuss these issues in more detail. We look forward to working with you on this critical issue.

Respectfully,



Caren E. Short
Senior Supervising Attorney
Southern Poverty Law Center

³ See NAACP Legal Defense and Educational Fund, Inc., *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation as of February 21*, NAACP Legal Defense and Educational Fund, <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-2.19.21.pdf>.