

February 19, 2014

BY USPS & EMAIL

William B. Harvey III
Beaufort City Attorney
HARVEY & BATTEY, PA
1001 Craven Street
Post Office Drawer 1107
Beaufort, South Carolina 29901

Dear Mr. Harvey:

On behalf of the Burton-Dale-Beaufort Branch of the NAACP (Burton-Dale-Beaufort NAACP),¹ the NAACP Legal Defense and Educational Fund, Inc. (LDF)² writes in response to the December 11, 2013 letter that we received from you in your capacity as the Beaufort City Attorney. As expressed in our initial letter, we are concerned that the existing at-large electoral method (and other potentially discriminatory enhancing factors)³ for the five-member Beaufort

¹ As mentioned in the initial letter to the Beaufort Mayor and other City Council Members, dated November 4, 2013, the Burton-Dale-Beaufort NAACP's advocacy efforts are squarely focused on changing the electoral method for the Beaufort City Council because the at-large electoral method to that body, in combination with racially polarized voting in Beaufort, is one of the most pressing issues facing Beaufort's Black community.

² Since its founding in 1940, LDF has been a pioneer in the struggle to secure and protect the voting rights of Black people. LDF has been involved in nearly all of the precedent-setting litigation related to securing voting rights for people of color. *See, e.g., Shelby County, Alabama v. Holder*, 133 S.Ct. 2612 (2013) (LDF defending Section 5 of the Voting Rights Act). LDF also recently successfully litigated a Section 2 of the Voting Rights Act case against a jurisdiction with a discriminatory at-large electoral method. *See, e.g., Georgia State Conference of the NAACP, et al. v. Fayette Cnty. Bd. of Comm'rs, et al.*, 950 F. Supp. 2d 1294, 1326 (N.D. Ga. 2013) (LDF, on summary judgment, securing a finding of a Section 2 of the Voting Rights Act violation in a challenge to the at-large electoral method to the county board of commissioners and board of education); *see also Georgia State Conference of the NAACP*, Civ. A. No. 3:11-CV-123-TCB, 2014 WL 617544, at *12 (N.D. Ga. February 18, 2014) (the order requiring district voting for both boards as a remedy for the Section 2 violation accompanies this letter).

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

³ In addition to the potentially discriminatory nature of the at-large electoral method, other voting practices, like that Beaufort City Council members are elected to four year, staggered terms, *see* S.C. Code Ann. § 5-15-40 (2013), likely enhance the discrimination that Beaufort's Black citizens experience because of at-large voting. *See, e.g., Jackson v. Edgefield Cnty., S.C. Sch. Dist.*, 650 F. Supp. 1176, 1202 (D.S.C. 1986) (in finding at-large method of electing school board trustees violated Section 2, the court recognized that "[a] vote dilution case may be strengthened by a showing of the existence of the 'enhancing factors,' which include



City Council dilutes the voting strength of Beaufort's Black population (nearly 26% of the 12,361 total population),⁴ and denies Black voters in Beaufort of the opportunity to participate equally in the political process and elect their preferred candidates.⁵ Under the existing at-large electoral method, "no Black candidate has been elected to office [in the City of Beaufort] in

staggered terms, district residency, majority vote requirement, anti-single shot provisions, and an unusually large election district."); *see also City of Lockhart v. United States*, 460 U.S. 125, 135 (1983) ("[t]he use of staggered terms also may have a discriminatory effect under some circumstances, since it . . . might reduce the opportunity for single-shot voting or tend to highlight individual races."); *City of Rome v. U. S.*, 446 U.S. 156, 183 (1980) (same).

⁴ According to 2010 Census estimates, Beaufort's African American population is 25.7% of the total population. *2010 City of Beaufort, South Carolina Demographical Data*, U.S. Census Bureau, available at <http://quickfacts.census.gov/qfd/states/45/4504690.html> (last visited Feb. 19, 2014).

⁵ As troubling as this exclusion from the political process is because of at-large voting, the markedly lower educational attainment and socioeconomic reality of Black citizens in Beaufort, which likely operates to limit their political participation, also is a cause of concern.

With regard to educational attainment, according to the 2008-2012 American Community Survey, as reported by the Census Bureau, 27.3% of the total African American population in Beaufort City, as compared to 7.3% of the total white, not-Hispanic population in Beaufort has less than a high school diploma. *Selected Socio-Economic Data, Beaufort City, South Carolina, African American and White, Not Hispanic: Data Set, 2008-2012 American Community Survey 5-Year Estimates*, at 21 (Dec. 29, 2013). In addition, 19.1% of the total African American population in Beaufort City, as compared to 48.9% of the total white, not-Hispanic population in Beaufort has a Bachelor's degree or higher. *Id.*

With regard to the socioeconomic reality, the disparities between the African American and white, not-Hispanic population in Beaufort are stark, including that 48.3% of the total African American population in Beaufort City, as compared to 8.6% of the total white, not-Hispanic population in Beaufort had family income in the past 12 months below the poverty level. *Id.* at 26. In addition, 49.0% of the total African American population in Beaufort City, as compared to 12.9% of the total white, not-Hispanic white population in Beaufort had income in the past 12 months below the poverty level. *Id.* at 28. Critically, 38.3% of the total African American population between 18 to 64 years of age in Beaufort City, as compared to 15.1% of the total white, not-Hispanic white population 18 to 64 years of age in Beaufort had income in the past 12 months below the poverty level. *Id.*

Even more, 36.8% of the total African American population in Beaufort City, as compared to 7.7% of the total, not-Hispanic white population had income of less than \$10,000 in the past 12 months. *Id.* at 30. For families, 39.9% of the total African American population in Beaufort City, as compared to 6.0% of the total white, not-Hispanic population in Beaufort had income of less than \$10,000 in the past 12 months. *Id.* at 34. 42.1% of the total African American household population in Beaufort City received food stamps/SNAP in the past 12 months, as compared to 9.0% of the total white, not-Hispanic household population in Beaufort. *Id.* at 49.



recent history.”⁶ We, therefore, write this follow-up letter in good faith to encourage the City Council to act swiftly, pursuant to its authority, to adopt an alternative method of election system⁷ that would ensure equal participation for all of Beaufort’s residents.

In your December 11 letter, you express the City Council’s belief that the Black population in Beaufort is “sufficiently large and geographically compact to constitute a majority in a single-member district,” as required by *Thornburg v. Gingles* to establish an actionable vote dilution claim under Section 2 of the Voting Rights Act.⁸ In particular, your letter explains that the Council does not believe that it is possible to have four single-member districts, one of which would contain a majority-Black voting-age population, with a fifth district electing the mayor-councilperson at-large, “without using up or down waterways or unincorporated area to connect portions of the district together.”⁹

In fact, there are several available district-based alternatives to Beaufort’s at-large method of election, each of which respect traditional redistricting principles, and contain at least one district in which Black voters comprise the majority of the voting-age population. We urge the Council to seriously consider the following options, which by no means are exhaustive, as a lawful avenue through which *all* voters in Beaufort will be afforded the opportunity to elect candidates of their choice and participate equally in the political process.

First, at least two variations of a four single-member district plan can be drawn under which the mayor-councilperson also would continue to be elected at-large, as under the existing electoral method and consistent with state law, and with each plan containing one district with a majority-Black voting-age population. *Second*, a six single-member district plan can be drawn in which the mayor-councilperson also would continue to be elected at-large, as under the existing electoral method and consistent with state law, and which contains one district with a majority-Black voting-age population. Significantly, each of the available alternatives to Beaufort’s

⁶ While your December 11 letter references two Black council members who served *before* 1994 (Alice Wright and Fred Washington), it nonetheless remains accurate our contention that in the last twenty years of Beaufort’s recent history, *no* Black candidate has served on the Council.

⁷ Single-member districts are a common remedy to dilutive at-large voting schemes. *See, e.g., Citizens for Good Gov’t v. City of Quitman*, 148 F.3d 472, 476 (5th Cir. 1998).

⁸ 478 U.S. 30, 50 (1986).

⁹ Though 18.6 of the 23.4 square miles of the City is land, another 4.8 square miles of it is water, according to the Census Bureau, the alternative plans set forth for consideration here strike the appropriate balance of respecting physical boundaries and waterways with ensuring equal electoral opportunity in Beaufort, as required by the Voting Rights Act and other applicable laws.



existing at-large method of electing members to the City Council respect traditional redistricting principles, including compactness, contiguity, keeping communities of interest whole, and contain a district in which Black voters comprise the majority of the voting-age population.

We reiterate that the City Council is empowered to move swiftly to adopt an alternative method of election system that would ensure equal participation for all of Beaufort's residents.¹⁰ As you know, inclusion on the City Council, particularly for historically excluded groups, is critical because of the important decisions that the Council makes, which impact all of Beaufort's residents.¹¹

Please consult with your demographer about these possible alternatives to the current at-large method of election, and provide us with your response *in writing* by **Monday, March 10, 2014**.

¹⁰ South Carolina state law expressly empowers city councils, like Beaufort's, to *initiate* the process to alter its electoral method through a simple majority vote. S.C. Code § 5-15-30 (2013) (acknowledging that the action of a majority of council can change the method of election to the council, followed by a referendum vote of a majority of registered city voters); *see generally* Municipal Association of South Carolina, *Forms and Powers of Municipal Government*, Aug. 2012, <http://www.masc.sc/SiteCollectionDocuments/Administration/Forms%20and%20Powers2.pdf>.

¹¹ As mentioned in our initial letter, the City Council makes important decisions impacting the Black community in Beaufort related to, for example, the city budget, spending and programming, contracts, permits, appointing judges, adopting and enforcing health and safety codes, zoning and land use regulations, licensing, ordinances, resolutions and regulations, and hiring or terminating workers. *See, e.g.*, S.C. Code Ann. § 5-13-30 (2013) (Powers and duties of municipal council); *see also* Jon B. Pierce & Edwin C. Thomas, *General Purpose Local Government in South Carolina: Prepared for the Local Government Funding System Reform Project*, at 17-18, <http://www.ipspr.sc.edu/grs/LGRP/DOC/LGFP%20Gen.%20Purpose%20Local%20Government.pdf> (discussing the wide range of general powers that South Carolina municipalities have).



In the interim, we welcome any questions that you may have in follow up to this letter. We further appreciate your invitation to openly discuss our concerns with the City Council's at-large electoral method and to continue this dialogue amicably.

Sincerely,

A handwritten signature in black ink, appearing to read "Leah C. Aden".

Leah C. Aden
Assistant Counsel
NAACP Legal Defense and Educational Fund

Ryan P. Haygood
Director, Political Participation Group
NAACP Legal Defense and Educational Fund

Cc: Billy Keyserling, Mayor (by email)
Donnie Ann Beer, Councilwoman (by email)
George H. O'Kelley, Jr., Councilman (by email)
Mike Sutton, Councilman (by email)
Mike McFee, Councilman (by email)

Scott Dadson, City Manager, Mayor & Council (by email)

Darryl T. Murphy, President, Burton-Dale-Beaufort Branch NAACP (by email)

Dwight James, Executive Director, South Carolina NAACP (by email)