



Georgia

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Via E-mail and Publication

Re: Legal Obligations for Redistricting Process

Dear General Assembly Member,

The ACLU of Georgia writes to remind you of your affirmative obligations to comply with the Voting Rights Act of 1965 (“VRA”) and the U.S. Constitution when considering new maps in the upcoming redistricting process. In addition, we wish to provide you with updated information that shows the demographic changes that have occurred in your district and the state over the past decade. As we have emphasized at every public town hall held across the state, the General Assembly should ensure that the redistricting process gives voters of color equal opportunities to elect their candidates of choice.

I. Maps Must Comply with the Voting Rights Act of 1965

Section 2 of the VRA requires that voters of color have an equal opportunity “to participate in the political process and to elect representatives of their choice.”¹ This requirement bans vote dilution, *i.e.*, the practice of minimizing or canceling out voting strength of certain minority groups so they are unable to elect candidates of their choice. Vote dilution can take many forms, including cracking, or “fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them,” or packing, where minority voters are placed into “one or a small number of districts to minimize their influence in the districts next door.”²

A map may violate the Section 2 prohibition on vote dilution if certain preconditions (“the *Gingles* preconditions”) are established:

1. a district can be drawn in which a minority group is sufficiently large and geographically compact to constitute a majority;
2. the minority group is politically cohesive; and

¹ 52 USC §10301(b).

² *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994).

3. the white majority voters vote sufficiently as a bloc to usually defeat the minority group's preferred candidate.³

If the *Gingles* preconditions are met, a “totality of circumstances” analysis must be conducted to determine whether minority voters have less opportunity than other members of the electorate to elect candidates of their choice. Some of the factors that may be considered in this analysis (referred to as the “Senate factors”) include the history of official voting-related discrimination, the extent to which voting in elections is racially polarized, and the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinders their ability to participate effectively in the political process.⁴ These factors are neither comprehensive nor exclusive, and other factors may be considered.⁵

Courts have noted that racially polarized voting, in particular, “will ordinarily be the keystone of a vote dilution case.”⁶ Federal courts in Georgia have found the existence of racially polarized voting in cases across the state in previous redistricting cycles,⁷ and our preliminary analysis shows that racially polarized voting likely continues to persist at a statewide level in 2021. Given these background conditions, legislators should be especially attuned to compliance obligations under the VRA.

II. Maps Must Comply with the U.S. Constitution

The maps that are drafted in this redistricting cycle must also comply with the U.S. Constitution. Chief among these constitutional constraints are the requirement of population equality and the prohibition against racial gerrymandering.

Maps that are adopted during the special legislative session must comply with the principle of “one person, one vote.” For congressional districts, this means that

³ *Thornburg v. Gingles*, 478 U.S. 30, 34 (1986).

⁴ S. Rep. No. 97-417, 97th Cong., 2d Sess. at 28-29 (1982).

⁵ *Id.*

⁶ *United States v. Marengo Cty. Comm'n*, 731 F.2d 1546, 1566 (11th Cir. 1984).

⁷ See, e.g., *Wright v. Sumter Cty. Bd. of Elections & Registration*, 979 F.3d 1282, 1305 (11th Cir. 2020) (finding that there was “no clear error” in the District Court’s finding that elections in Sumter County were “highly polarized.”); *Georgia State Conference of the NAACP v. Fayette Cty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338 (N.D. Ga. 2015) (finding that for purposes of a preliminary injunction, evidence of racial bloc voting and lack of electoral success for Black voters in Fayette County pointed “commandingly in [Plaintiffs] favor” (quoting *Georgia State Conference of NAACP v. Fayette Cty. Bd. of Comm'rs*, 775 F.3d 1336 (11th Cir. 2015))).

maps must have equal population “as nearly as is practicable.”⁸ For state legislative districts, this requires “substantially equal” populations between districts.⁹

Legislators must also ensure that they do not engage in racial gerrymandering when drafting maps. While race may be used in certain, narrowly circumscribed ways (such as compliance with the VRA), the Fourteenth Amendment prohibits racial considerations from predominating over other factors in drawing district lines, unless the use of race is narrowly tailored to achieve a compelling state interest.¹⁰ If a state invokes the VRA to justify using race as a predominant factor in redistricting, it must show that it had a “strong basis in evidence” for making the race-based decision.¹¹

Legislators should also be wary of attempts to mechanically increase or artificially maintain the same percentage of Black voters in districts already electing candidates preferred by Black voters, all under the guise of VRA compliance. **This type of simplistic, race-based redistricting would likely constitute an illegal racial gerrymander.** The Supreme Court has explicitly rejected these types of end-runs around the Constitution. For example, in *Cooper v. Harris*, the Court rejected North Carolina’s attempt to redraw a congressional district by adding more Black voters so that the new Black voting age population in the district exceeded a specific racial threshold.¹² Although North Carolina attempted to justify this decision by claiming that it was necessary to ensure that the new district would continue to provide Black voters an equal opportunity to elect their candidates of choice, the Court held that the new district could not pass constitutional muster because the State did not “carefully evaluate whether a plaintiff could establish the *Gingles* precondition” and “too far downplay[ed] the significance of a longtime pattern of white crossover voting in the area.”¹³ These blunt attempts to pack minority voters should be rejected.

III. Maps Must Fairly Reflect the Power of Voters of Color

Georgia has seen a seismic demographic shift over the last ten years. All of the growth in Georgia’s overall population has been driven by people of color.¹⁴ Black Georgians constitute the largest minority group in the state. According to 2020

⁸ *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964).

⁹ *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

¹⁰ *See Bethune–Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 801 (2017).

¹¹ *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015).

¹² 137 S. Ct. 1455, 1471 (2017).

¹³ *Id.*

¹⁴ *See* Jeremy Redmon, Mark Niesse, Maya T. Prabhu, *2020 Census: Georgia’s Minority Populations Have Surged*, Atlanta Journal-Constitution (Aug. 12, 2021), <https://www.ajc.com/news/feds-set-to-release-2020-census-data/4NT7E3XMHZFBBDK5T5IK5NNOVE/>.

Census data, Black Georgians now represent approximately 33% of the overall population in the state, and approximately 34% of the voting age population in the state.¹⁵ The maps that are drafted in 2021 must fairly reflect these changing demographics.

Despite these demographic trends, Black voting strength is not fully accounted for in the maps adopted in the past redistricting cycle (which are currently in use). While demographic thresholds by themselves are not determinative of whether districts afford minority voters an effective opportunity to elect their candidates of choice, they are an important consideration to note as we enter this redistricting cycle.¹⁶ Under the current maps, Black voters make up a majority of the voting age population in only 47 out of 180 (26.1%) state House districts and 13 out of 56 (23.2%) state Senate districts. And although race of elected officials does not always correlate to voter preference, it is also an important consideration in a Section 2 analysis under the totality of the circumstances.¹⁷ In Georgia, only 52 out of 180 (28.9%) state House members and 16 out of 56 (28.6%) state Senate members are Black.

Earlier this summer, the ACLU of Georgia provided your office with preliminary data regarding demographic changes that have occurred in your district and the state over the past decade. We have now updated that information with Census data that was released in August of 2021. We have also included a table that shows the demographic changes that have occurred at the county level. We hope that this information will be useful in understanding the demographic changes that have occurred in your area.

Please feel free to contact our office with any questions or to discuss any of these issues in greater detail. For more information on redistricting, you can also visit our website at <https://acluga.org/redistricting/>.

¹⁵ This data is based on voters who identified as “any part” Black in the 2020 Census.

¹⁶ *Johnson v. De Grandy*, 512 U.S. 997, 1000 (1994) (noting that 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” may not be “dispositive,” it is a “relevant fact in the totality of circumstances to be analyzed” in a vote dilution case.).

¹⁷ One of the Senate factors that can be used to assess the totality of the circumstances when weighing a Section 2 violation is “the extent to which members of the minority group have been elected to public office in the jurisdiction.” S. Rep. No. 97-417, 97th Cong., 2d Sess. at 28-29 (1982).

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Young". The signature is fluid and cursive, with the first name "Sean" and last name "Young" clearly distinguishable.

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