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December 7, 2021

*Sent via email*

Fayette County Board of Commissioners  
c/o Bryan Tyson, counsel  
Attn: Redistricting  
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[boardofcommissioners@fayettecountyga.gov](mailto:boardofcommissioners@fayettecountyga.gov)  
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Dear Members of the Fayette County Board of Commissioners:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”)<sup>1</sup> writes to remind the Fayette County Board of Commissioners (“BOC”) of its obligations to comply with the text and spirit of the Fourteenth Amendment to the U.S. Constitution and Section 2 of the Voting Rights Act (“VRA”), as well as other laws and principles that are relevant in redistricting for this important local body.<sup>2</sup> In addition to correcting any malapportionment problems stemming from demographic changes in Fayette County between 2010 and 2020, we urge this Board to ensure that Black voters and other voters of color have a voice and an opportunity to elect their preferred candidates outside of District 4, the lone and hard-won<sup>3</sup> single-member district (“SMD”) that complies with the spirit and text of the VRA.

As the BOC is well aware, after the 2020 census, this body embarked on its current redistricting cycle. In rebalancing Fayette County’s population among the BOC’s four SMDs,<sup>4</sup> the Commissioners have proposed increasing the population of Black voters in District 4. However, in so doing, the BOC is packing Black voters, with the Black voting-age population (“VAP”) in that district at well over 50%, despite that the BOC previously agreed—in settling voting rights litigation in 2015—that District 4 could function as an effective remedial district if Black voters comprised a plurality of voters at approximately 46% of the VAP.<sup>5</sup> Indeed,

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<sup>1</sup> Since 1957, LDF has been a separate entity from the NAACP and its state and local branches.

<sup>2</sup> 52 U.S.C. § 10301.

<sup>3</sup> Order, ECF 271, *Ga. State Conf. of the NAACP, et al. v. Fayette Cnty. Bd. of Comm’rs, et al.*, 3-11-cv-00123-TCB (N.D. Ga. Aug. 3, 2015) (granting plaintiffs’ motion for a preliminary injunction, enjoining the BOC from conducting a special election in 2015 under at-large voting and requiring the BOC to conduct such an election under the remedial plan adopted by the court in 2014 and other related court orders).

<sup>4</sup> The fifth seat on the BOC is elected at-large by all eligible voters in the County.

<sup>5</sup> See generally, Pls.’ Consent Mot. To Dismiss Case With Prejudice Against County Defendants, ECF 305 at 2-3, *Ga. State Conf. of the NAACP, et al. v. Fayette Cnty. Bd. of Comm’rs, et al.*, 3-11-cv-00123-TCB

beginning in 2014, Black voters in District 4 have seen their candidate of choice elected in multiple election cycles and have elected their candidate of choice in a district in which they comprise a plurality of the VAP.<sup>6</sup> And that representation has been vital to ensuring the responsiveness of the BOC to the needs of Black and other voters of color in Fayette.

Rather than unnecessarily pack more Black voters in District 4, as the BOC proposes to do, in this post-2020 redistricting cycle, the BOC has the opportunity to develop another district in which Black and other voters of color could form the plurality, or, Black voters could, at minimum, form a sufficiently large part of the electorate to influence elections in the district. Such an opportunity district makes sense given that the population of Fayette County continues to grow and diversify, there continue to be patterns of racially polarized voting in Fayette elections, and there is evidence that Black and other voters of color continue to experience inequality of opportunity in the political process in Fayette. In short, voters of color should have a voice in another commissioner district in addition to District 4.

We propose an alternative map to that proposed by the BOC, as the BOC's map would effectively foreclose the opportunity of a second opportunity district for another decade.<sup>7</sup> Our proposed plan is attached to this letter as **Appendix A**, and we urge the BOC to seriously consider it. This alternative plan complies with the U.S. Constitution, Section 2, other governing laws and principles, and, by comparison to the map proposed by the Board, goes much further in protecting the electoral opportunity of Fayette County's voters of color.

#### **I. This Board Must Ensure Compliance with the U.S. Constitution and Section 2 of the Voting Rights Act.**

As the BOC is well aware, any maps that it adopts must comply with the "One Person, One Vote" mandate of the Fourteenth Amendment's Equal Protection Clause, which requires

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(N.D. Ga. Sept. 2, 2016) (indicating that the Georgia General Assembly enacted into law a redistricting plan for the BOC, Act 314 of 2016, as a settlement provision with plaintiffs in Section 2 of the Voting Rights Act case); Fayette County Commissioners District Map, [Commission Districts \(arcgis.com\)](https://arcgis.com).

<sup>6</sup> Tammy Joyner, *Fayette's voting rights feud: A petri dish of social, political change*, AJC.com (Nov. 21, 2015), <https://www.ajc.com/news/local-govt--politics/fayette-voting-rights-feud-petri-dish-social-political-change/tG6duwCSOTOWoTwhXAq0EJ/?mode=new>.

Significantly, in the first election in 2014 in Fayette using SMDs rather than pure at-large voting, Fayette County voters had the highest turnout of all 159 counties in Georgia. Ben Nelms, *Fayette milestone in Election*, TheCitizen (Nov. 12, 2014), <https://thecitizen.com/2014/11/12/fayette-milestones-election-2014/>; Georgia SOS, Georgia Election Results, General Election, Nov. 4, 2014 [https://results.enr.clarityelections.com/GA/54042/149045/en/vt\\_data.html](https://results.enr.clarityelections.com/GA/54042/149045/en/vt_data.html)

<sup>7</sup> Fayette County Board of Commissioners, *FayetteCCSB-Draft-2021* (Nov. 5, 2021), <https://fayettecountyga.gov/administration/BOC/archives/2021/11-09-2021-RedistrictingAgendaRequestMapsbackup.pdf> ("Draft Map"). A pdf of this map and its related demographic statistics are included within **Appendix B** to this letter.

equal access to representation at all levels of government,<sup>8</sup> as well as Section 2's "nationwide ban on racial discrimination in voting."<sup>9</sup>

### A. Fulfilling the "One Person, One Vote" Requirement

State and local bodies such as the BOC may have population deviations within plus or minus five percent of the mathematical mean.<sup>10</sup> The population equality principle is intended to ensure both equal access to representation for all people and equal access to electoral power for all voters.<sup>11</sup>

As the BOC recognizes, the 2020 Census shows that Fayette County's total population is now 119,194 people.<sup>12</sup> Based on this number and that four of the five seats on the BOC are elected from SMDs, each district must, to the extent practicable, contain approximately 29,799 people.<sup>13</sup> Due to population changes, Fayette County's existing commissioner districts, drawn after the 2010 Census and in line with a federal court order, are now malapportioned and must be corrected.<sup>14</sup>

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<sup>8</sup> *Reynolds v. Sims*, 377 U.S. 533, 565-68 (1964); *id.* at 558 (quoting *Gray v. Sanders*, 372 U.S. 368, 381 (1963)) ("The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote."); see U.S. Const. amend. XIV, § 1 ("No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.").

<sup>9</sup> *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 557 (2013); 52 U.S.C. § 10301(a) ("No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied . . . in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . .").

<sup>10</sup> See *Reynolds*, 377 U.S. at 568; ("The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races."); see also *Gaffney v. Cummings*, 412 U.S. 735, 744-45 (1973) ("minor deviations from mathematical equality among state legislative districts" are not constitutionally suspect, but "larger variations from substantial equality are too great to be justified by any state interest"); *Brown v. Thomson*, 462 U.S. 835, 842 (1983) (holding that apportionment plans with a maximum population deviation among districts of less than 10% are generally permissible, whereas disparities in excess of 10% most likely violate the "one person, one vote" principle).

<sup>11</sup> See *Reynolds*, 377 U.S. at 567-68; see also *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1967) (explaining that "[e]qual representation for equal number of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives."); accord *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137 (1961); see also *Garza v. County of Los Angeles*, 918 F.2d 763, 775 (9th Cir. 1990) (explaining how all residents have a "right to petition their government for services" and "[i]nterference with individuals' free access to elected representatives impermissibly burdens their right to petition the government").

<sup>12</sup> Draft Map, *supra* n.7.

<sup>13</sup> See Jill Howard Church, *Draft of new voting map tweaks Fayette districts*, The Atlanta-Journal Const. (Nov. 13, 2021), <https://www.ajc.com/neighborhoods/fayette/draft-of-new-voting-map-tweaks-fayette-districts/PN6TWNFAFOFEC3OKTRI45WYXGOQ/>.

<sup>14</sup> See, e.g., *Reynolds*, 377 U.S. at 568.

Any map this Board adopts must address these apportionment issues, as the BOC's proposed map and our alternative map do.

## **B. Complying with Section 2 of the Voting Rights Act**

Additionally, in developing a redistricting plan, this body has an obligation under Section 2 of the VRA and the U.S. Constitution to ensure that, under the totality of circumstances, the voting power of Black and other voters of color is not diluted, including by unnecessarily packing them into too few districts.<sup>15</sup>

Section 2 prohibits voting standards, practices, or procedures that either are enacted with racially discriminatory intent or have racially discriminatory results.<sup>16</sup> Section 2 requires states and localities like Fayette, under certain circumstances, to draw districts that provide minority voters with an effective opportunity to elect their preferred candidates ("effective minority opportunity districts").<sup>17</sup> To fulfill that obligation, this Board must conduct a sensitive and "an intensely local appraisal" of the "totality of the circumstances," under a "functional view of the political process."<sup>18</sup> This entails attention not only to the demographic composition of districts, but also to other factors such as "participation rates

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<sup>15</sup> 52 U.S.C. § 10301(b); *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986) ("[Section] 2 prohibits the implementation of an electoral law that 'interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.'"); see also *LULAC v. Perry*, 548 U.S. 399, 425 (2006) (describing the operation of the "totality of the circumstances" standard in the vote-dilution claims); *Ala. Leg. Black Caucus v. Alabama*, 575 U.S. 254, 275-78 (2015) (holding that the Voting Rights Act does not require districts to have "a particular numerical minority percentage," but concerns itself rather with "a minority's ability to elect a preferred candidate of choice"); *Bethune-Hill v. Va. State Bd. of Elections*, 326 F. Supp. 3d 128, 180 (E.D. Va. 2018) (on remand from the Supreme Court, ruling that 11 legislative districts were unconstitutional racial gerrymanders because "the legislature did not undertake any individualized functional analysis in [those] districts to provide 'good reasons to believe' that the 55% threshold was appropriate," as the narrow-tailoring component of strict scrutiny requires).

<sup>16</sup> *Chisom v. Roemer*, 501 U.S. 380, 394 & n.21 (1991).

<sup>17</sup> The circumstances in which effective minority opportunity districts are required arise when the three "*Gingles* preconditions" exist. Those preconditions are (1) whether the minority community in Fayette County is sufficiently large and geographically compact to constitute a majority in an additional district; (2) whether minority voters are politically cohesive; and (3) whether bloc voting by white voters usually prevents minority voters from electing their preferred candidates in at-large elections or in majority-white districts in the County. *Gingles*, 478 U.S. at 50-51. Once these preconditions are established, "the court considers whether 'on the totality of circumstances,' minorities have been denied an 'equal opportunity' to 'participate in the political process and to elect representatives of their choice.'" *Abrams v. Johnson*, 521 U.S. 74, 91 (1997) (quoting 52 U.S.C. § 10301(b)).

"[I]t will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of Section 2 under the totality of circumstances." *NAACP v. City of Niagara Falls*, 65 F.3d 1002, 1019 n.21 (2d Cir. 1995); see also *Thompson v. Glades Cnty. Bd. of Cnty. Comm'rs*, 493 F.3d 1253, 1261 (11th Cir. 2007), *vacated on other grounds at* 508 F.3d 975; *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993).

<sup>18</sup> *Gingles*, 478 U.S. at 79, 45 (internal quotation marks and citation omitted).

and the degree of cohesion and crossover voting.”<sup>19</sup> Sometimes, but not always, such effective minority opportunity districts will be SMDs comprised of a majority of Black and/or other voters of color, or a plurality of Black and other voters of color,<sup>20</sup> such as District 4, which was agreed upon by all parties at the culmination of a four-year long federal voting rights lawsuit. In drawing effective minority opportunity districts, this Board must not minimize Black voters’ electoral strength by “packing” Black voters into districts with unnecessarily high Black populations or by “cracking” them into districts with insufficient populations to provide Black and other voters of color with an opportunity to elect their preferred candidates. Doing either would likely violate Section 2 and the U.S. Constitution.<sup>21</sup>

Despite these obligations, the BOC has elected to pack Black voters into District 4. Under the BOC’s proposed plan, District 4, the lone Black opportunity district, would now have a 55% any-part Black VAP.<sup>22</sup> As proposed, this district would contain almost 10 percentage points more Black voters than the level (46%) which the BOC agreed would be sufficient to provide Black voters an opportunity to elect their preferred candidates perform and at which multiple election cycles have shown is enough for the district to perform for Black voters. Put another way, District 4 does not need such a large majority of Black voters to function as an effective minority opportunity district. Moreover, under the BOC’s proposed map, Black voters are no more than 21% of the VAP in the other three SMDs for the BOC.<sup>23</sup>

In short, the BOC’s proposed map unnecessarily packs too many Black voters into District 4, denying the opportunity for Black and other voters of color outside that lone district to participate meaningfully in the election of representatives to the BOC.

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<sup>19</sup> Bernard Grofman, Lisa Handley, David Lublin, *Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence*, 79 N.C. L. Rev. 1383, 1415 (2001).

<sup>20</sup> See, e.g., *Cooper v. Harris*, 137 S. Ct. 1455, 1472 (2017) (rejecting the argument that “whenever a legislature can draw a majority-minority district, it must do so,” because there are circumstances in which “a crossover district would also allow the minority group to elect its favored candidates.”).

<sup>21</sup> *ALBC*, 575 U.S. at 278; *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 802 (2017) (finding 12 districts were unconstitutional racial gerrymanders because the legislature decided to make them all meet a 55% BVAP target for which there was no strong basis in evidence).

<sup>22</sup> When considering the Black, Latino, and Asian voters of citizen voting-age in the BOC’s proposed District 4, that population is approximately 61%. See **Appendix B**.

<sup>23</sup> See *Cooper*, 137 S. Ct. at 1455 (affirming the Middle District Court of North Carolina’s judgment that racial considerations predominated in the design of two districts, citing, among other things, uncontested evidence that mapmakers worked to ensure that Black voters remain in the voting minority).

When considering the combined Black, Latino, and Asian voters of citizen voting-age combined in the BOC’s proposed map, their population is no greater than approximately 29% in the other three SMDs. *Id.*

## **II. It Is Possible to Develop a BOC Map with a Second District that Would Allow Black and Other Voters of Color the Opportunity to Elect a Candidate of Choice.**

Based on our analyses—and in line with the spirit of the BOC’s 2015 redistricting settlement, as well as Section 2 and the U.S. Constitution—it is possible to draw a plan for Fayette County’s four single-ember BOC districts in a way that would provide Black and other voters of color to have an opportunity to elect candidates of choice in more than one district.

In our proposed map in **Appendix A**, Black voters in District 4 would comprise approximately 47% of the VAP, the approximate percentage Black voters were as part of the voting rights case settlement.<sup>24</sup> Additionally, District 1 would include Black voters at about 37% of VAP.<sup>25</sup>

This additional district would help to ensure that BOC representatives are responsive to the needs of constituents from Black voters and other communities of color outside of District 4.

## **III. This Board Should Consider Additional Factors Relevant to Proposed Maps.**

Although the race of elected officials does not necessarily correlate to voter preference, the U.S. Supreme Court has held that one of the “predominant” factors under Section 2’s totality of the circumstances consideration is “the extent to which members of the minority group have been elected to public office in the jurisdiction” at issue.<sup>26</sup> At present, only one out of five members (20%) of the BOC is a Black person. And that representative is elected from the plurality-Black District 4 developed as a result of litigation challenging how at-large

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<sup>24</sup> The any-Part Black category counts as “Black” any person who self-identifies as Black alone or Black in combination with any other race or ethnicity, including those who also self-identify as Hispanic. The Census began using the Any-Part Black category in 2000. The Supreme Court has held that where Black voters are the only minority group whose exercise of the franchise is at issue, “it is proper to look at *all* individuals who identify themselves as black.” *Georgia v. Ashcroft*, 539 U.S. 461, 473 n.1 (2003) (emphasis in the original), *superseded by statute on other grounds as recognized by Ala. Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1273 (2015); *see also* Order 271 at 14-15, n.8, *Ga. State Conf. of the NAACP, et al. v. Fayette Cnty. Bd. of Commr’s*, 3-11-cv-00123-TCB (N.D. Ga. Aug 3, 2015).

When considering the Black, Latino, and Asian combined CVAP in this proposed district, it is approximately 53%.

<sup>25</sup> When considering the Black, Latino, and Asian CVAP in this district, together they would comprise approximately 45%.

<sup>26</sup> *Gingles*, 478 U.S. at 37; *see also Southern Christian Leadership Conference of Alabama v. Sessions*, 56 F.3d 1281, 1315 n.4 (11th Cir. 1995) (The Eleventh Circuit has held that “the most important Senate Factor is the extent to which [Black people] have been elected to public office.”); *Citizens for a Better Gretna v. City of Gretna*, 636 F. Supp. 1113, 1120 (E.D. La. 1986) (“Where members of the minority group have not been elected to public office, it is of course evidence of vote dilution.”)

voting, in combination with racially polarized voting, discussed below, resulted in *no* Black candidate or candidate of choice of the Black community ever serving on the BOC (or Fayette County Board of Education) until 2014. Today, as we understand, it remains the sad reality that only one Black person has ever been elected to a countywide office—Magistrate Judge Floyd—though he, however, was elected under special circumstances, as an incumbent after he was appointed to the bench.<sup>27</sup>

A pattern of racial bloc voting in Fayette County is another key consideration that the Board must consider in assessing its Section 2 obligations.<sup>28</sup> Racial bloc voting exists when candidates preferred by Black voters are typically defeated by the candidates preferred by non-Black voters. In litigation against this body, the BOC conceded that racial bloc voting existed in Fayette County elections.<sup>29</sup> And there are indicia that racial bloc voting continues to exist into the present in various elections in Fayette County.<sup>30</sup>

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<sup>27</sup> Order Granting Plaintiff's Motion for Summary Judgment at 64, *Ga. State Conf. of the NAACP v. Fayette Cty. Bd. of Comm'rs*, 3:11-cv-00123-TCB (N.D. Ga. May 21, 2013), ECF No. 152, *aff'd in part, vacated in part, and rev'd in part on other grounds* by 775 F.3d 1336 (11th Cir. 2015); Order, ECF 271 at 21-22, *Ga. State Conf. of the NAACP, et al. v. Fayette Cnty. Bd. of Comm'rs, et al.*, 3-11-cv-00123-TCB (N.D. Ga. Aug. 3, 2015); *see also Ga. State Conf. of the NAACP*, 775 F.3d at 1339, n.4 (although reversing, the appellate court recognized that “the district court made abundantly clear in its comprehensive opinion that the substantial weight of that evidence favored” plaintiffs); *Ga State Conf. of the NAACP*, 775 F.3d at 1347, n.9 (the appellate court reasoning, as of 2015, that “with no African-American candidate ever elected to the BOE or the BOC and racially polarized voting in elections for both boards, both of these important, undisputed factors pointed commandingly in [plaintiffs'] favor).

<sup>28</sup> *Gingles*, 478 U.S. at 48 n.15; *see also De Grandy*, 512 U.S. at 1007 (explaining that racially polarized voting increases the potential for discrimination in redistricting, because “manipulation of district lines can dilute the voting strength of politically cohesive minority group members”); *see also Westwego Citizens for Better Gov't v. City of Westwego*, 872 F.2d 1201, 1207 (5th Cir. 1989) (“Evidence of racially polarized voting is the linchpin of a section 2 vote dilution claim.”)

<sup>29</sup> Order Granting Plaintiff's Motion for Summary Judgment at 43, *Ga. State Conf. of the NAACP v. Fayette Cty. Bd. of Comm'rs*, 3:11-cv-00123-TCB (N.D. Ga. May 21, 2013) (“Thus, it is undisputed that Fayette County’s African-American population is politically cohesive and that its elections are characterized by racially polarized bloc voting.”), *aff'd in part, vacated in part, and rev'd in part on other grounds* by 775 F.3d 1336 (11th Cir. 2015); Order, ECF 271 at 24, *Ga. State Conf. of the NAACP, et al. v. Fayette Cnty. Bd. of Comm'rs, et al.*, 3-11-cv-00123-TCB (N.D. Ga. Aug. 3, 2015) (“[T]he Court believes the evidence of racial block voting and the lack of electoral success of Black candidates before Ms. Coston [in 2014], including a lack of success by Black candidates in Republic primaries, point ‘commandingly in [Plaintiffs]’ favor.”)

<sup>30</sup> For example, in the 2016 presidential election, for example, only 6.4% of Georgia counties with a majority-white population (>50.0%) voted in favor of candidate Hillary Clinton—and Fayette was not one of them—while 81% of Georgia counties with a majority-minority population voted in favor of Clinton. *Georgia 2016 Presidential Results*, NPR (Nov. 8, 2016), <https://www.npr.org/2016/11/08/501078236/georgia-2016-presidential-and-state-election-results>.

Municipal elections in Fayette County also shed light on racial bloc voting patterns. Black candidates supported by Black voters have been defeated in contests against at least one white candidate in elections in Tyrone and Peachtree for mayor and city council positions because of a lack of white voter support for Black voters’ preferred candidates.

Further, in recent, settled litigation against the BOC, a federal court acknowledged evidence showing that Fayette County's Black electorate had "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."<sup>31</sup> This was based on evidence that there is a history of voting discrimination in Fayette County specifically and Georgia generally; as discussed above, voting in Fayette County is racially polarized and there is a lack of Black countywide officeholders in Fayette; and Black and other voters of color bear the effects of discrimination in a variety of areas of life in Fayette County.<sup>32</sup>

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After decades of exclusion, Black voters benefited from the overhaul of Fayette County's exclusive use of at-large voting, a system that, until 2014, denied Black voters of access to representation on the BOC for the County's nearly 200-year existence. The level of civic and political engagement of Fayette County residents<sup>33</sup> is credited with the overall well-being of the community. In 2018, the U.S. News & World Report recognized Fayette County as among the 1,000 Healthiest Communities across the country.<sup>34</sup> Today, this Board has the opportunity to continue this trajectory by rejecting outright any redistricting map with a dilutive result and adopting a map that would reflect the voting power of Black and other voters of color in District 4 and District 1. Our proposal included in **Appendix A** accomplishes both. The alternative map we offer addresses the Fourteenth Amendment's equal-population mandate, considers Section 2 compliance, and is informed by Fayette County's voting patterns, history, and other relevant data and information. Our goal in developing this map is to ensure that all voters have access to representation and Black voting power is not diluted in the process.

We welcome the opportunity to work with the BOC in pursuing a more inclusive redistricting plan, and to help it to avoid the costly and lengthy litigation that this body is

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<sup>31</sup> *Ga. State Conference of the NAACP v. Fayette Cnty. Bd. of Comm'rs*, 950 F. Supp. 2d 1294, 1326 (N.D. Ga. 2013) (quoting 42 U.S.C. § 1973(b)), *rev'd in part on other grounds by Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 775 F.3d 1336 (11th Cir. 2015). On appeal, the Eleventh Circuit explained that while the existence of genuine issues of material fact in the case made summary judgment inappropriate, "[w]e cannot say that the district court misconstrued our precedent or reached its conclusions based on a misunderstanding of the applicable law." *Fayette Cnty.*, 775 F.3d at 1343-44.

<sup>32</sup> Order Granting Plaintiff's Motion for Summary Judgment at 52, 54, 59, and 69, *Ga. State Conf. of the NAACP v. Fayette Cnty. Bd. of Comm'rs*, 3:11-cv-00123-TCB (N.D. Ga. May 21, 2013), *aff'd in part, vacated in part, and rev'd in part on other grounds by* 775 F.3d 1336 (11th Cir. 2015).

<sup>33</sup> For example, in the four years between 2016 and 2020, Fayette County voter rolls expanded by 25%. Cal Beverly, *More than half – 54% - of Fayette's voters have already voted by Wednesday*, The Citizen (Oct. 28, 2020), <https://thecitizen.com/2020/10/28/47-of-fayette-countys-active-voters-have-already-cast-ballots-as-of-oct-27/>.

<sup>34</sup> Gaby Galvin & Joseph P. Williams, *Building Off 'Black Mecca'*, U.S. News & World Report (Sept. 25, 2018), <https://www.usnews.com/news/healthiest-communities/articles/2018-09-25/a-better-place-to-be-black-georgia-counties-excel-in-community-health>.



aware can occur when redistricting is not compliant with Section 2 and the Constitution.<sup>35</sup> Please feel free to contact Leah Aden with any questions or to discuss these issues in more detail. We look forward to hearing from you soon and continuing to work together for the people of Fayette County.

Sincerely,

/s/ Leah Aden

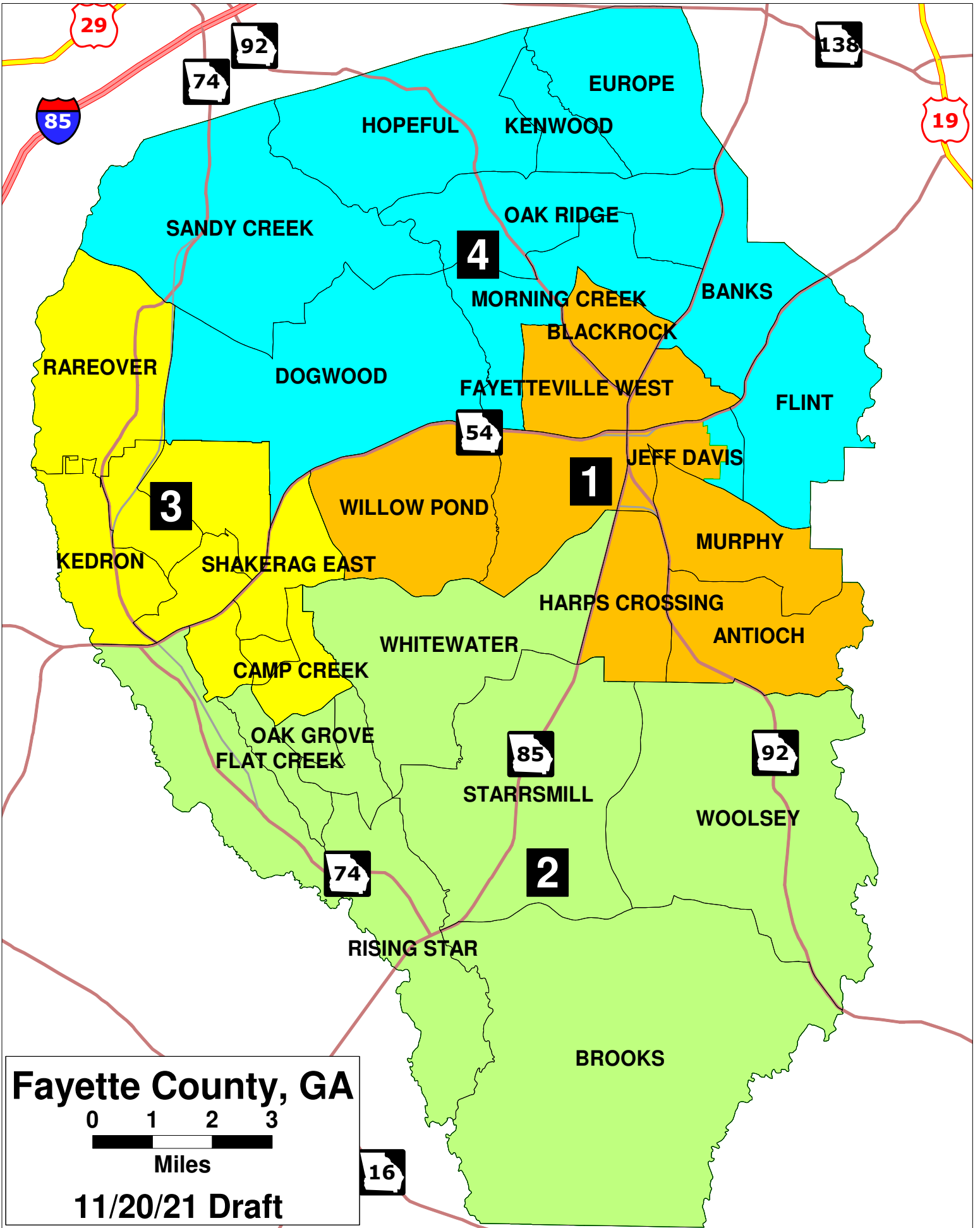
Leah Aden, Deputy Director of Litigation  
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## Attachments

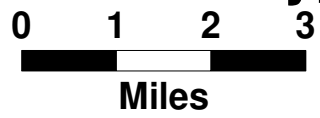
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<sup>35</sup> See John E. Jones, *Appealing District Vote Wastes \$1M*, THE CITIZEN (Dec. 2, 2014), available at <http://thecitizen.com/articles/12-02-2014/appealing-district-vote-wastes-1m> (noting that Fayette County, Georgia spent \$1 million unsuccessfully fighting a Section 2 claim); Federal Judicial Center, 2003-2004 District Court Case-Weighting Study, Table 1 (2005) (finding that voting cases consume the sixth most judicial resources); 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. 92 (2005) (“Two to five years is a rough average” for the length of Section 2 lawsuits); *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation*, NAACP Legal Defense and Educ. Fund, Inc. (Sept. 21, 2021), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-9.19.21-Final.pdf>.

## APPENDIX A



# Fayette County, GA



11/20/21 Draft

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## Population Summary Report

### Fayette County -- November 20, 2021 Draft

| District          | 2020 Pop.      | % 2020       |               | 18+ Pop       | 18+ AP        | % 18+ AP      | 18+_NH        | % 18+ NH | 2015-19 | 2015-19 | 2015-19    | 2015-19  | 2015-19 |
|-------------------|----------------|--------------|---------------|---------------|---------------|---------------|---------------|----------|---------|---------|------------|----------|---------|
|                   |                | Deviation    | Black         |               | Black         | White         | White         | BCVAP*   | LCVAP*  | ACVAP*  | B+L_+ACVAP | NH White |         |
| 001               | 29930          | 0.44%        | 23358         | 8703          | 37.26%        | 11617         | 49.73%        | 34.94%   | 5.12%   | 5.09%   | 45.15%     | 54.62%   |         |
| 002               | 29880          | 0.28%        | 22371         | 1871          | 8.36%         | 17740         | 79.30%        | 6.60%    | 3.88%   | 2.29%   | 12.77%     | 85.94%   |         |
| 003               | 30083          | 0.96%        | 23011         | 2337          | 10.16%        | 16434         | 71.42%        | 9.23%    | 5.11%   | 2.81%   | 17.15%     | 81.13%   |         |
| 004               | 29301          | -1.67%       | 23058         | 10817         | 46.91%        | 9311          | 40.38%        | 44.52%   | 4.78%   | 3.76%   | 53.06%     | 46.33%   |         |
| <b>Total 2020</b> |                |              |               |               |               |               |               |          |         |         |            |          |         |
| <b>Pop.</b>       | <b>119,194</b> | <b>2.63%</b> | <b>91,798</b> | <b>23,728</b> | <b>25.85%</b> | <b>55,102</b> | <b>60.03%</b> |          |         |         |            |          |         |

**CVAP Source:**

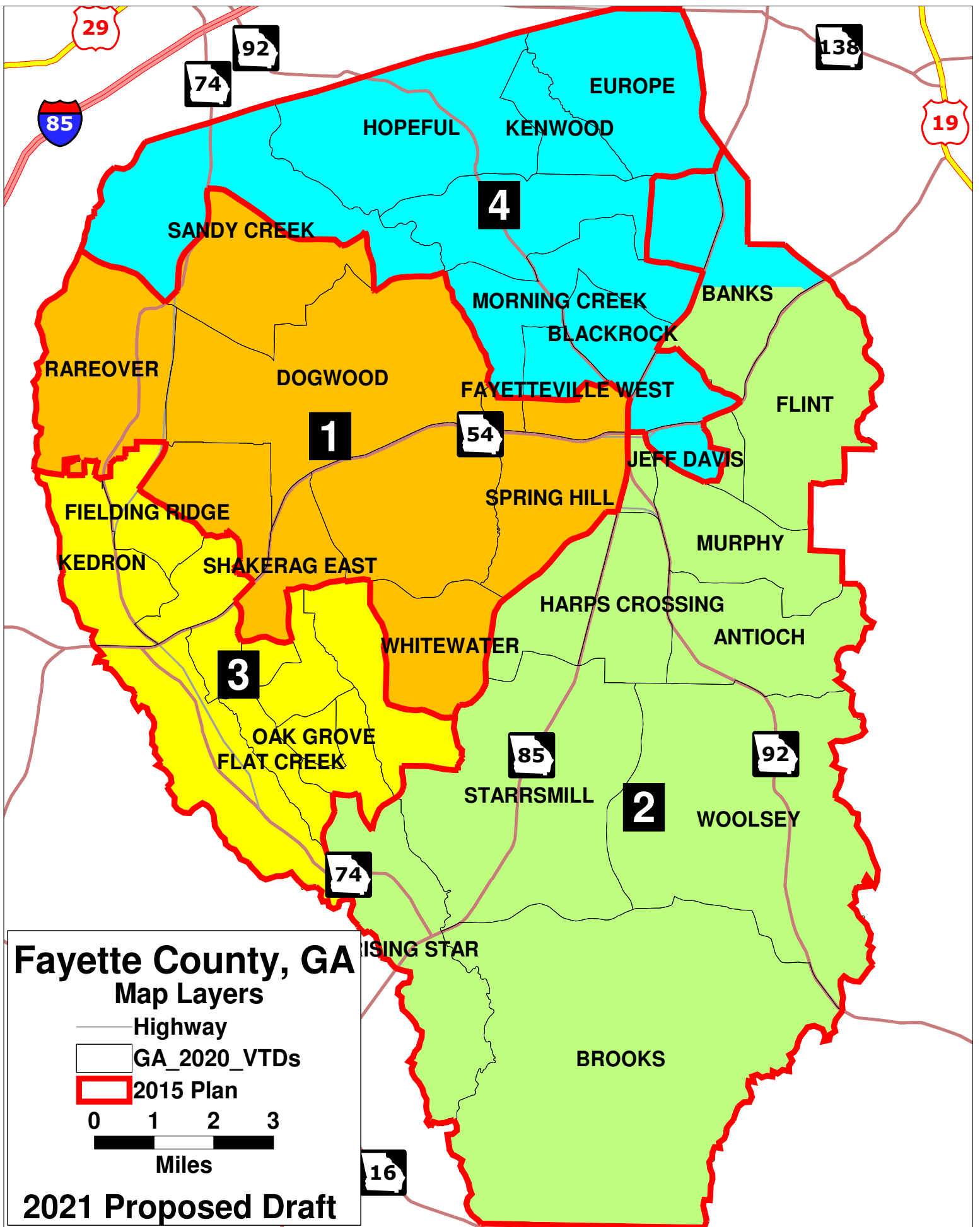
\* 2015-19 ACS Special Tabulation

Note: Citizen Voting Age Population (CVAP) percentages are disaggregated from block-group level ACS estimates (with a survey midpoint of July 2017)

Source for disaggregation: Redistricting Data Hub

<https://redistrictingdatahub.org/dataset/maryland-cvap-data-disaggregated-to-the-block-level-2019/>

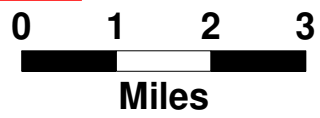
## APPENDIX B



# Fayette County, GA

## Map Layers

- Highway
- GA\_2020\_VTDs
- 2015 Plan



**2021 Proposed Draft**

## Population Summary Report

### Fayette County -- Proposed Plan

| District                   | 2020 Pop.      | % 2020<br>Deviation | 18+ Pop       | 18+ AP<br>Black | % 18+ AP<br>Black | 18+_NH<br>White | % 18+ NH<br>White | 2015-19<br>BCVAP* | 2015-19<br>LCVAP* | 2015-19<br>ACVAP* | 2015-19<br>B+L_+ACVAP | 2015-19<br>NH White<br>CVAP* |
|----------------------------|----------------|---------------------|---------------|-----------------|-------------------|-----------------|-------------------|-------------------|-------------------|-------------------|-----------------------|------------------------------|
| 001                        | 29084          | -2.40%              | 22647         | 4782            | 21.12%            | 14635           | 64.62%            | 18.73%            | 4.97%             | 5.45%             | 29.15%                | 70.15%                       |
| 002                        | 30234          | 1.46%               | 23023         | 4287            | 18.62%            | 16184           | 70.29%            | 16.95%            | 3.88%             | 3.27%             | 24.10%                | 75.28%                       |
| 003                        | 30827          | 3.45%               | 23389         | 2197            | 9.39%             | 16937           | 72.41%            | 6.33%             | 5.83%             | 2.47%             | 14.63%                | 82.96%                       |
| 004                        | 29049          | -2.51%              | 22739         | 12462           | 54.80%            | 7346            | 32.31%            | 53.48%            | 4.29%             | 2.79%             | 60.56%                | 39.26%                       |
| <b>Total 2020<br/>Pop.</b> | <b>119,194</b> | <b>5.96%</b>        | <b>91,798</b> | <b>23,728</b>   | <b>25.85%</b>     | <b>55,102</b>   | <b>60.03%</b>     |                   |                   |                   |                       |                              |

**CVAP Source:**

\* 2015-19 ACS Special Tabulation

Note: Citizen Voting Age Population (CVAP) percentages are disaggregated from block-group level ACS estimates (with a survey midpoint of July 2017)

Source for disaggregation: Redistricting Data Hub

<https://redistrictingdatahub.org/dataset/maryland-cvap-data-disaggregated-to-the-block-level-2019/>