



September 27, 2021

Sent via email

Redistricting Ad Hoc Committee
Judiciary Committee
South Carolina House of Representatives
Columbia, South Carolina 29211
redistricting@schouse.gov

Re: Follow-up on Recommendations for Transparency, Public Involvement, and Fair Representation in South Carolina's Redistricting Process

Dear Chair Jordan and Committee Members:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”), American Civil Liberties Union (“ACLU”), ACLU of South Carolina, South Carolina State Conference of the NAACP, League of Women Voters of South Carolina, South Carolina Appleseed Legal Justice Center, and South Carolina Progressive Network Education Fund write to reiterate our grave concerns with this Committee’s failure to provide transparency during the ongoing redistricting cycle.

On August 9, 2021, several of the present signatories wrote to this Committee, in part, to recommend ways to involve your constituents and organizations that serve them, during *all* stages of the redistricting process.¹ Three weeks later, on August 30, 2021, we wrote to reiterate our concerns because this Committee had failed to make any effort to provide transparency around its redistricting process.² Because of those shortcomings, we also posed additional questions. Among them, we asked when this Committee intends to

¹ Letter from LDF, et al., to the S.C. House of Representative Judiciary Committee’s Redistricting Ad Hoc Committee (Aug. 9, 2021), https://www.naacpldf.org/wp-content/uploads/Letter-to-SC-House-Redistricting-Ad-Hoc-Committee_08.09.2021_final.pdf.

² Letter from LDF, et al., to the S.C. House Judiciary Committee’s Redistricting Ad Hoc Committee (Aug. 30, 2021), <https://www.naacpldf.org/wp-content/uploads/Follow-Up-Letter-to-SC-House-Redistricting-Ad-Hoc-Committee-8-30-21.pdf>.

share its proposed maps with the public and how it intends to provide the public with opportunities to testify and provide public comments on maps proposed by this Committee or others, emphasizing that the public must have an opportunity to respond to proposed maps *before* any such maps are finalized or approved.

Representative Chris Murphy, who chairs the House Judiciary Committee, responded on behalf of this Committee on September 3, 2021.³ However, the Chair’s response did not answer either of these questions, which are foundational to ensuring a fair and transparent process during the present redistricting cycle.⁴ Nor has this Committee meaningfully addressed the remaining concerns and recommendations that we have shared.⁵ Because of these shortcomings, along with the public statements described below, we write to request more information about how this Committee plans to proceed during the redistricting cycle that is underway. Specifically, we request responses to the following questions:

1. When does the House intend to return to session to consider redistricting plans?⁶
2. As we inquired in our August 30 letter, when does this Committee intend to share proposed maps with the public?
3. By what deadline does this Committee desire to receive proposed maps from members of the public, does this Committee have a preferred

³ Letter from Rep. Chris Murphy, Chairman, House Judiciary Committee, S.C. House of Representatives, to LDF, et al. (Sept. 3, 2021) (on file with signatories).

⁴ *Id.*

⁵ We appreciate this Committee’s decision to add a second opportunity to testify remotely during the public hearing on September 28, in addition to the previously announced opportunity on October 4. However, as we indicated in our initial letter, there is no reason not to have allowed remote participation in all nine of the hearings held to date, particularly considering current levels of COVID-19 transmission in South Carolina. *See Public Hearing Schedule*, S. C. House of Representatives, <https://redistricting.schouse.gov/publichearing.html>.

⁶ Public reporting indicates that the House could reconvene for a special session in December 2021. Seanna Adcox, *SC House Unlikely to Return Until December, and then Only for Redistricting*, The Post and Courier (Sept. 22, 2021), https://www.postandcourier.com/columbia/sc-house-unlikely-to-return-until-december-and-then-only-for-redistricting/article_142b89f0-1bbf-11ec-a986-07909036ac92.html; *but see* Speaker Jay Lucas (@schousespeaker), Twitter (Sept. 22, 2021), <https://twitter.com/schousespeaker/status/1440743475549401088?s=20> (stating “the House has no plans to reconvene for a special session.”). If the House does not reconvene for a special session, the next opportunity for it to consider any redistricting maps would be during the regular session, which is scheduled to begin on January 11, 2022. *See* S.C. Const., art. III, § 9 (“The annual session of the General Assembly shall convene at the State Capitol Building in the City of Columbia on the second Tuesday of January of each year.”).

format for the submitted files, and during what timeframe does this Committee intend to consider such maps?

4. As we inquired in our August 30 letter, does this Committee intend to hold public hearings in which testimony and public comment can be provided on maps proposed by this Committee and maps proposed by members of the public, *before* such maps are finalized or approved by the Committee?
5. What is the House’s timeline for considering and approving redistricting plans?
6. What steps, if any, has the House taken to ensure that its timeline for considering and approving maps will be sufficient to allow any litigation that may be filed to be fully resolved before the March 16, 2022, candidate filing deadline for the 2022 partisan primaries?

If history is a guide, if the House does not reconvene to consider and approve redistricting plans until December 2021 or January 2022, that unnecessary delay will likely prevent a court from ruling on the constitutionality of your maps before the candidate filing deadline in March. This Committee is no doubt aware that a redistricting process that leaves insufficient time for judicial review puts the court and the public in the impossible position of leaving an unconstitutional plan in place or striking the plan down close to an election, which could breed voter “confusion and consequent incentive to remain away from the polls.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). In the 2010 redistricting cycle, for example, the South Carolina federal court took nearly four months to adjudicate constitutional claims related to redistricting. *Backus v. South Carolina*, 857 F. Supp. 2d 553 (D.S.C.), *aff’d*, 568 U.S. 801 (2012). Similarly, during the 2000 redistricting cycle, the South Carolina federal court needed six months to draw a new plan after this body failed to draw maps with roughly equal population, violating the principle of one-person-one-vote. *Colleton Cty. Council v. McConnell*, 201 F. Supp. 2d 618 (D.S.C. 2002).

As we explained in our August 9 and 30 letters, it is critical to involve your constituents and other community members, as well as to ensure transparency during *all* stages of the redistricting process. Equally important, as we further explained in our letters, transparency and robust public input are also necessary to assist this Committee with its affirmative obligations to comply with the U.S. Constitution, Section 2 of the Voting Rights Act, and other legal considerations and redistricting principles. Answers from the Committee’s to the basic questions above will be an important step toward meeting these obligations. Further, based on the law, South Carolina’s recent history, and the House Redistricting Guidelines—which appropriately prioritize constitutional compliance—the House should revisit its process immediately and ensure ample time for meaningful consideration and analysis, for the public to digest its maps,

and for courts to adjudicate any constitutional claims well in advance of the 2022 election cycle.

Unfortunately, the lack of information that this Committee has provided thus far suggests an unwillingness on your part to engage your constituents and the public in a fair, transparent, and participatory redistricting process. We therefore call on this Committee to immediately take steps to remedy these shortcomings. We request your response in writing **by 5:00 p.m. on Wednesday, September 29, 2021.**

* * *

Please feel free to contact John Cusick at jcusick@naacpldf.org with any questions or to discuss these issues in more detail. We look forward to hearing from you soon and working together for the people of South Carolina.

Sincerely,

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