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Good morning. My name is Natasha Korgaonkar, and I serve as Assistant Counsel with the NAACP Legal Defense and Educational Fund, Inc. (LDF). Founded under the direction of Thurgood Marshall, LDF is the nation's premier civil rights law firm. LDF's mission is to use legal, legislative, public education and advocacy strategies to promote the full, equal, and active participation of African Americans in our democracy.

On behalf of LDF, I am pleased to present testimony at today's hearing before the Legislative Task Force on Demographic Research and Reapportionment. My testimony will address the importance of adhering to traditional principles of redistricting, including compliance with Section 2 of the federal Voting Rights Act (VRA). In particular, my testimony will briefly address three points that focus on the importance of those bodies charged with redistricting: (1) remaining mindful of their obligations under the Voting Rights Act during the redistricting process; (2) keeping communities of interest together; and (3) maintaining existing effective minority opportunity districts, and seeking additional opportunities to create new such districts where communities of color have grown and/or shifted.

Section 2 of the Voting Rights Act

First, compliance with the Voting Rights Act ("VRA") is an essential requirement of any redistricting proposal. In particular, Section 2 of the VRA prohibits voting practices that were either enacted with racially discriminatory intent, or that have racially discriminatory effects.[1]

As the Supreme Court held in *Thornburg v. Gingles*,[2] Section 2 prohibits "minority vote dilution." Vote dilution occurs where minority voters are unable to participate equally in the political process and to elect their preferred candidates because the majority in a given district votes as a bloc to minimize or to cancel the effectiveness of minority votes.[3]

In the redistricting context, examples of unlawful vote dilution include "cracking" "packing," and "stacking." "Cracking" refers to the act of spreading a cohesive group of minority voters across a large number of districts. Cracking can occur where a minority population that could form a majority in a single district is instead split and divided amongst two or more separate districts, thus depriving members of that community of the concentrated voting strength necessary to elect candidates of their choice.

[1] The amended and current version of Section 2 requires consideration of both discriminatory intent and effect, as it prohibits practices "imposed or applied ... in a manner which results in a denial or abridgment … of the right to vote on account of race…." 42 U.S.C. § 1973(a) (2000 ed.).
[2] 478 U.S. 30 (1986).
[3] *Id*. at 58. Since *Gingles*, the Court has explained that actionable minority vote dilution can occur in both an at-large voting system and a districting plan involving single-member districts, where election lines have been drawn in such a way that has the same effect of canceling minority votes. *See, e.g., Growe v. Emison*, 507 U.S. 25 (1993).

The term "packing," by contrast, refers to the act of compressing minority communities into a small number of districts, which results in districts with unnecessarily high minority populations, essentially bleaching adjacent districts of minority influence.

Finally, "stacking" is the process by which districts that are artificially majority-minority are constructed such that the district contains a large low-income minority population along with a smaller, more affluent white population. While stacked districts appear to be majority-minority, they still dilute the minority vote by capitalizing on the fact that lower income populations are less likely to turn out to vote for a variety of reasons, many of which stem from those communities' socio-economic realities. In a stacked district, the smaller white population will be able to elect their candidate of choice simply because the district combines them with a large minority population that is less likely to vote.

Each of these means of diluting minority voting strength could be actionable under Section 2 of the Voting Rights Act. Redistricting bodies and communities alike should all be aware of whether proposed redistricting plans employ any of these tactics, and should steer clear of plans that do.

Communities of Interest

Second, drawing compact districts that keep communities of interest together should be an essential priority of any fair redistricting plan. Adherence to this mandate is important to ensuring that proposed district configurations comply with the Voting Rights Act and state law. Moreover, such compliance will help to safeguard against resulting legal challenges that ultimately delay the entire process of redistricting—often to the detriment of the electorate.

In a state as diverse as New York, and particularly in a borough as diverse as Queens, "communities of interest" can mean many things to many people. However, the core concern of the concept is straightforward: communities of interests are population groups whose needs, concerns, objectives, and conditions are shared.

These shared experiences and goals can be found among people in a number of ways, including where groups share immigration histories, income levels, language identities, educational backgrounds, housing patterns, or environmental conditions. Where possible, communities of interest should be kept intact because they are naturally allied stakeholders in the issues that connect them. Redistricting in a manner that respects the integrity of communities of interest allows these groups to work together to elect candidates of choice, petition for mutually-needed resources, and work towards greater collective civic engagement around the concerns that are most important for those groups.

Dividing communities of interest is highly disfavored precisely because it serves to fracture cohesive communities, and with it their ability to meaningfully engage in the democratic process.

This redistricting cycle, groups proposing maps and legislators reviewing them should be mindful of keeping communities of interest together to the extent possible, and supported by other redistricting principles.

Types of Effective Minority Opportunity Districts

Finally, in light of the many tactics that can and have been used to suppress the minority vote, it is important to know what it means for minority voters to have an equal "opportunity to elect" candidates of our choice. There are essentially three types of "effective minority opportunity districts:"

- Majority-minority districts – district where members of a minority group constitute a numerical majority of a district. Whether such a district constitutes an "effective minority opportunity district" depends, in large part, on the level of racially polarized voting in a community and racial disparities in voter registration and/or turnout rates;

- Coalition districts – district where no single minority group constitutes 50% of the district by itself, but where members of multiple minority groups vote cohesively and, together, constitute a majority in the district. The Second Circuit, which governs New York, has ruled that coalition districts are required by Section 2 under some circumstances.[4]

- Crossover districts – district where members of a minority group, though not a majority of a district, can elect candidates of their choice with support from a small but reliable group of non-minority voters who "cross over" to support minority-preferred candidates. Although the Supreme Court, in *Bartlett v. Strickland*,[5] held that the creation of crossover districts is not, strictly speaking, *required* by Section 2 of the VRA, the court did hold that state legislatures throughout the country remain free to create such districts[6];

Another type of district to remember is an "influence district." In an influence district, minority voters cannot elect a candidate of their choice, but they have a sufficiently large presence so as to have some influence on the political process. In an influence district, a minority group may not be able to elect a particular candidate

[4] *See Bridgeport Coal. for Fair Representation v. City of Bridgeport*, 26 F.3d 271, 275 (2d Cir. 1994) *rev'd on other grounds*, 512 U.S. 1283 (1994) (upholding the district court's determination that "[c]ombining minority groups to form [majority-minority] districts is a valid means of complying with § 2 if the combination is shown to be politically cohesive").

[5] 129 S. Ct. 1231 (2009).

[6] 128 S.Ct. at 1248 ("[A] legislative determination, based on proper factors, to create two crossover districts may serve to diminish the significance and influence of race by encouraging minority and majority voters to work together toward a common goal. The option to draw such districts gives legislatures a choice that can lead to less racial isolation, not more.… § 2 allows States to choose their own method of complying with the Voting Rights Act, and we have said that may include drawing crossover districts…. States that wish to draw crossover districts are free to do so where no other prohibition exists.").

outright, but they group would be large enough that the winning candidate would need that community's vote, and would thereby have to be responsive to that group's needs.

Although some commentators have used the terms "coalition," "crossover," and "influence" districts interchangeably, there are crucial differences among the three. While coalition and crossover districts give minority voters with an opportunity to elect candidates of their choice, influence districts provide no such opportunity. How to define or measure "influence" on the political process short of an actual ability to elect candidates remains an open question. "Influence" districts, therefore, are in no way a substitute for effective minority opportunity districts.[7]

Nevertheless, where only an influence district can be drawn, they should be strongly considered as a way to support minority groups' effective participation in the political process.

Conclusion

In conclusion, I offer three observations. *First*, given the Supreme Court's recognition of the persistence of racial discrimination in voting, legislatures must remain mindful of their obligations under the Voting Rights Act during the redistricting process. The VRA remains an essential tool for minority community empowerment and engagement.

Second, redistricting plans should maintain existing effective minority opportunity districts. The dismantling of any type of effective minority opportunity district could invite liability under Section 2.

Third, those charged with redistricting must be mindful of opportunities to both maintain existing effective minority opportunity districts, and to seek additional opportunities to create new ones where there has been population growth in minority communities. This is important even if a particular minority population does not yet reach a 50% threshold of a proposed district. One of many ways to do this is by keeping together communities of interest which, as communities grow over time, can serve as seeds for what will later become effective minority opportunity districts. Helping to foster growth of political participation among minorities by seeking new opportunities for effective minority districts is a principle which is especially important in a part of the state as diverse as New York City, and in a borough as dynamic as Queens.

[7] Indeed, when reauthorizing Section 5 of the VRA in 2006, Congress made clear that "influence districts" cannot be a substitute for effective minority opportunity districts, by amending the statute to overrule the Supreme Court's contrary holding in *Georgia v. Ashcroft*, 539 U.S. 461 (2003). *See, e.g.*, Nathaniel Persily, The Promises and Pitfalls of the New Voting Rights Act (VRA), 117 YALE L.J. POCKET PART 139, 165 (2007) ("*Ashcroft* opened the possibility that under the cloak of influence districts, jurisdictions would create districts in which minorities had no influence at all…. [I]t is clear that the bill's ability-to-elect language attempted to remove the possibility of a tradeoff with influence districts.").