

November 17, 2017

By USPS Mail & Email

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Dear Mr. Klein:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”)¹ writes at the urging of Everyday People for Positive Change (“EDP”), concerning the City of Columbus’ (“Columbus”) at-large method of electing its seven city council members, of which you are one.² EDP, a ballot issue committee, believes that this electoral method, under which no Black candidate has been elected to office in recent history *without* an initial appointment, including those incumbents elected in this November’s election, weakens the voting strength of Columbus’ Black community. This organization considers this to be one of the most pressing issues facing the community and has advocated for a change to the electoral method for the city council.

At the request of EDP, LDF is conducting a review of Columbus’ at-large electoral method for members of its city council. We have substantial concerns that this electoral method may violate Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301(a) (“Section 2”), and other federal and state laws, by denying voters of color in Columbus of the equal opportunity to elect

¹ Since its founding in 1940, LDF has been a pioneer in the struggle to secure and protect the voting rights of Black and other people of color. LDF uses legal, legislative, public education, and advocacy strategies to promote the full, equal, and active participation of Black people in America’s democracy. LDF has been a separate entity from the NAACP, and its state branches, since 1957.

LDF has successfully litigated numerous cases against jurisdictions with discriminatory at-large electoral methods. *See, e.g., Terrebonne Parish Branch NAACP v. Jindal*, No. 14 Civ. 0069 (JJB), 2017 WL 3574878 (M.D. La. Aug. 17, 2017) (a challenge to the at-large method of election to the state court encompassing Terrebonne Parish); *Ga. State Conf. of NAACP v. Fayette Cty. Bd. of Comm’rs*, 118 F. Supp. 3d 1338 (N.D. Ga. 2015) (a challenge to the at-large method of election to the county board of commissioners and board of education).

² *E.g.*, Ohio Rev. Code Ann. §§ 731.01-731.06, 733.02 (West 2016) (methods of election of council by wards and at large; mayor elected at large; qualifications); Columbus, Ohio, Charter § 3, Ord. No. 1749-2014 (2014) [hereinafter *Columbus City Charter*] (“The legislative powers of the city . . . shall be vested in a council, consisting of seven members, elected at large.”).

The list of current Columbus city council members is available at *Council Member Contact Information*, City of Columbus City Council, <https://www.columbus.gov/council/members/> (last visited Nov. 17, 2017); *see also* Ohio Rev. Code Ann. § 705 (West 2016) (municipal governments in Ohio operate under one of three forms of government, including the council manager form, as in Columbus); *id.* § 705.51 (structure of council-manager form of government; election of council and mayor).

their preferred candidates to this important local body.³ We write to provide the city council with this information so that this body can pursue an inclusive, fair course of action and avoid potentially costly⁴ and lengthy⁵ litigation that may be required to ensure compliance with Section 2 and other applicable laws.

Section 2 prohibits voting standards, practices, or procedures, including at-large electoral methods, that are either have a racially discriminatory intent or have racially discriminatory results.⁶ One of the chief purposes of Section 2 is to prohibit minority vote dilution, which can occur when an at-large electoral system denies Black voters of the opportunity to participate equally in the political process and elect their preferred candidates because their votes are canceled out by the white majority who vote as a bloc. Indeed, courts have found that other jurisdictions in Ohio have violated Section 2 by maintaining at-large voting. For example, the U.S. District Court for the Northern District of Ohio found that an at-large electoral system for city council and school board members in Euclid violated Section 2 because it diluted the Black voting strength in that city.⁷

While, as of the 2010 Census, Black residents comprise nearly 28% of Columbus' 788,792 total population, only one Black candidate, Jennette Bradley,⁸ has been elected to the city council in recent history *without* special circumstances being present. All of the Black members currently serving on the city council were initially appointed and subsequently elected to the council as

³ We also note that other voting practices, such as the election of city council members to staggered terms, *see Columbus City Charter, supra* note 2, § 4, may enhance the discrimination that Columbus' Black citizens experience. *See, e.g., 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. United States*, 446 U.S. 156, 183 (1980) (same).

⁴ *See, e.g.,* Memorandum Decision & Order at 1, *Pope v. County of Albany*, 94 F. Supp. 3d 302 (N.D.N.Y. Sept. 16, 2015) (No. 11 Civ 736), 2015 WL 510944, at *1 (awarding plaintiffs more than \$1.7 million in attorney’s fees and costs in a Section 2 challenge to an electoral scheme for the county legislature); Order, *Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. June 19, 2015) (No. 12 Civ. 3108), 2015 WL 11120966, at *13 (awarding plaintiffs more than \$1.8 million in attorney’s fees and costs in a Section 2 challenge to an at-large voting system for city council); Brief of Avila, et al. as Amici Curiae Supporting Respondents, *Shelby County v. Holder*, 133 S. Ct. 2612 (2013) (No. 12-96), 2013 WL 432963, at *25 (detailing the actions of Charleston County, South Carolina, which fought, unsuccessfully, to overturn a Section 2 liability finding concerning its at-large electoral system at the cost of \$2 million in public funds); *see also* Carol L. Krafka, Patricia A. Lombard, *2003-2004 District Court Case-Weighting Study: Final Report to the Subcommittee on Judicial Statistics of the Committee on Judicial Resources of the Judicial Conference of the United States*, Table, 1 Federal Judicial Center (2005), <https://www.fjc.gov/content/2003-2004-district-court-case-weighting-study-final-report-subcommittee-judicial-statistic-0> (finding that voting cases consume the sixth most judicial resources out of sixty-three types of cases analyzed).

⁵ *See, e.g., 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).

⁶ 52 U.S.C. § 10301(a) (West 2016); *see also, e.g., Mich. State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 667 (6th Cir. 2016); *Rural W. Tenn. African-Am. Affairs Council v. Sundquist*, 209 F.3d 835, 844 (6th Cir. 2000); *Mallory v. Eyrich*, 839 F.2d 275, 277 (6th Cir. 1988).

⁷ *See United States v. Euclid City Sch. Bd.*, 632 F. Supp. 2d 740, 745, 749 (N.D. Ohio 2009); *United States v. City of Euclid*, 580 F. Supp. 2d 584, 586, 612 (N.D. Ohio 2008); *United States v. City of Euclid*, 523 F. Supp. 2d 641, 647 (N.D. Ohio 2007).

⁸ Ms. Bradley was elected to the Columbus city council in 1991. *Republican Firsts*, Ohio Republican Party, <https://www.ohiogop.org/about/history/> (last visited Nov. 17, 2017).

incumbents.⁹ This remains true even after the most recent city council election on November 7, 2017.

In *Thornburg v. Gingles*, the U.S. Supreme Court recognized that “special circumstances, such as the absence of an opponent [and] incumbency,” do not diminish the need for systemic reform.¹⁰ Consistent with that recognition, courts have found that appointments of minority individuals to elected positions in an at-large voting system may be indicative of impermissible vote dilution under Section 2.¹¹ Indeed, Columbus has been reputed to have informally recognized a “Black male” seat (occupied initially by James Roseboro and Jerry Hammond, for which, after Ben Espy resigned, Michael Coleman, Fred Ransier, Kevin Boyce, Troy Miller, and Shannon Hardin – all Black males, were subsequently appointed). In recognizing the history of the city council making mid-term appointments of Black men to that seat, Franklin County Democratic Party chairman Dennis White said: “they’ve had a tradition of doing that, and it seems as if that has worked out.”¹² Other Black candidates in elections to the city council have been defeated under the at-large system,¹³ and Black neighborhood leaders have strenuously advocated for electoral change, including around a recent, unsuccessful referendum initiative that had been opposed by City Hall.¹⁴

All the while, this city council has been making important decisions impacting the Black community, including: the city budget; spending and programming; contracts; permits; health and

⁹ See *Columbus City Charter*, *supra* note 2, § 5 (requiring the appointment of a person to fill a vacancy of city council member).

¹⁰ 478 U.S. 30, 57 (1986).

¹¹ See *Meek v. Metro. Dade County*, 985 F.2d 1471, 1483-84 (11th Cir. 1993), *abrogated on other grounds by Dillard v. Chilton Cty. Comm’n*, 495 F.3d 1324 (11th Cir. 2007) (in finding at-large method of electing county commissioners violated Section 2, the court recognized that “incumbency, following initial appointments, explained the success of three of the four black Commissioners elected to the County Commission with a majority of the black vote”); *Pope v. County of Albany*, 94 F. Supp. 3d 302, 346 (N.D.N.Y. 2015) (“[T]he evidence shows that several minority candidates who were elected Countywide were appointed *before* they were elected, and therefore gained the benefits of incumbency without first having to win white voter support.”) (emphasis added).

¹² See Doug Caruso, *Ransier to Leave City Council*, *The Columbus Dispatch* (July 7, 2000); see also Barb Carmen, *More Time Didn’t Help Fill Council Seat* (Aug. 20, 2000).

¹³ For example, Dimitrious Wayne Stanley ran unsuccessfully for a city council seat in 2015, receiving 13% of the votes cast. City of Columbus City Council General Election Results, Franklin Cty. Bd. of Elections (Nov. 24, 2015), [http://vote.franklincountyohio.gov/assets/downloads/election-information/2015/\(4\)%20General%20Election%20-%20November%203,%202015/\(1\)%20Election%20Results/\(4\)%202015%20General%20-%20Official%20Results%20-%20Most%20Populous%20-%20Summary.pdf](http://vote.franklincountyohio.gov/assets/downloads/election-information/2015/(4)%20General%20Election%20-%20November%203,%202015/(1)%20Election%20Results/(4)%202015%20General%20-%20Official%20Results%20-%20Most%20Populous%20-%20Summary.pdf).

Moreover, courts have recognized that Black candidates may not run for election because of the discriminatory voting system. See, e.g., *McMillan*, 748 F.2d at 1045 (“[T]he lack of black candidates is a likely result of a racially discriminatory system,” in response to defendants claim that no black candidate ran for the commission between 1970 and 1977 when plaintiffs filed suit); see also *United States v. Marengo Cty. Comm’n*, 731 F.2d 1546, 1568–69 (11th Cir. 1984) (same).

¹⁴ See, e.g., Lucas Sullivan, *Council ward issue destroyed at polls: 72 percent of voters say no*, *The Columbus Dispatch* (Aug. 3, 2016, 11:32 AM), <http://www.dispatch.com/content/stories/local/2016/08/02/issue-one.html>.

safety codes; zoning and land use regulations; licensing; and municipal employment.¹⁵ The city council also has oversight over policing, which has significant impact on Columbus' Black residents, and continues to be raised at council meetings.¹⁶ Reportedly, out of the 15 largest cities in our country, Columbus ranks number one in the percentage of Black people killed by police.¹⁷ The council has the power to shape policies on policing to address and prevent incidents, such as the fatal police shooting of Trye King, and other instances of police violence, brutality, and misconduct in Columbus against the Black population.¹⁸

Moreover, the longstanding advocacy to save a significant portion of Poindexter Village, the first public housing community in Ohio, that has for generations existed in the heart of a historically Black Columbus neighborhood, also illuminates the cry for an alternative to at-large

¹⁵ In addition to those specific powers conferred to municipal councils, *see* Ohio Rev. Code Ann. § 717.01 (West 2016), Ohio municipalities have a wide range of general powers. *See e.g.*, Ohio Const. art. XVIII, § 3; Ohio Rev. Code Ann. § 715.01 (1953).

¹⁶ This city council has oversight over the Division of Police. The Public Safety Committee is one of the city council's standing committees, which oversees the Director of Public Safety and Chief of Police. *See Columbus City Charter, supra* note 2, § 111.04 (standing committees). The Mayor and City Council oversee the Department of Public Safety and Division of Police. *See, e.g., Columbus City Charter, supra* note 2, § 102 (division of police); Columbus, Ohio, Admin. Code, tit. 2, ch. 217, § 1, Ord. No. 154-84 (2014) (“[The] department of public safety consist[s] of a director of public safety, a deputy director of public safety, the division of support services, the division of fire and the division of police. The department shall perform all lawful functions as may be directed by the mayor or ordinance of council.”); *id.* § 2 (“The director of public safety shall be appointed by the mayor and serve at the pleasure of the mayor with a salary fixed by ordinance of council.”); *id.* § 5 (“Under the direction of the director of public safety, the chief of police shall have control of all police stations and substations . . .”).

Minority individuals made up roughly 18.5% of a recent police class even though minority individuals represent 40.7% of the total population in Columbus. Lucas Sullivan, *Diversity in Columbus police, fire recruits yet to improve*, The Columbus Dispatch (Jan. 31, 2016, 10:20 AM), <http://www.dispatch.com/content/stories/local/2016/01/31/1-diversity-in-columbus-police-fire-recruits-yet-to-improve.html>; *see also* Mark Ferenchik & Rick Rouan, *Incumbent Democrats sweep 3 City Council seats*, The Columbus Dispatch (Nov. 8, 2017, 5:54 AM), <http://www.dispatch.com/news/20171107/incumbent-democrats-sweep-3-city-council-seats> (reporting that “[g]roups protesting police violence against black residents have twice interrupted council meetings”).

¹⁷ Bob Fittrakis, *Columbus is Number One! (In police killing black people)*, Columbus Free Press, (May 4, 2017), <https://columbusfreepress.com/article/columbus-number-one-police-killing-black-people>

¹⁸ *See, e.g.*, Rick Rouan, *First group of Columbus officers equipped with cameras*, The Columbus Dispatch (Dec. 30, 2016, 10:15 AM), <http://www.dispatch.com/content/stories/local/2016/12/29/first-group-of-columbus-officers-equipped-with-cameras.html#> (reporting that members of the public “held protests at city hall and outside the county courthouse after Henry Green, 23, and Tyre King, 13, were fatally shot by Columbus officers in separate incidents this year.”); Randy Ludlow, *Columbus police handling of racial slurs facing Ohio civil rights charge*, The Columbus Dispatch (July 17, 2016, 10:58 AM), <http://www.dispatch.com/content/stories/local/2016/07/17/state-looks-into-columbus-police-handling-of-racial-slurs.html> (reporting that the Ohio Civil Rights Commission charged the Columbus Division of Police with unlawful discriminatory practices after finding that the Police Division failed to promptly investigate a white Columbus police officer who made racist remarks and threatened to kill Black Columbus police officers); Letter from Ralph F. Boyd, Jr., Assistant Attorney General, U.S. Dep’t of Justice, to Michael Coleman, Mayor, City of Columbus, Ohio (Sept. 4, 2002), <https://www.justice.gov/crt/resolution-pattern-or-practice-litigation-columbus-police> (agreeing to settle a lawsuit against the City of Columbus for police misconduct); Claire Bernish, *13-yr Killed by Police was a Ticking Timebomb—Dept Has History of Rampant Violence & Racism*, FreeThoughtProject.com (Sept. 27, 2016), <http://thefreethoughtproject.com/columbus-pd-racist-violent-murderous/> (“Racism, in fact, has been a longstanding issue for the Columbus Police Department — evidencing a sharp divide along color lines, even between officers, which lends credence to the idea a white officer wouldn’t necessarily restrain himself against using fatal force against minorities.”).

voting, such as district-based voting, for city council members. An author of a book about Poindexter Village, S. Yolanda Adams, reportedly proclaimed: “This is exactly why so many of us for so long have believed that Council Districts are important—we get overlooked and our voices are not heard—there is nobody to represent us.”¹⁹

That these and other such critical decisions are made in a system where Columbus’ Black community members may not have an equal opportunity to elect their representatives of choice to the city council is alarming. Precisely because they have all too often operated as structural walls of exclusion and infringed upon the fundamental right that is “preservative of all rights,”²⁰ at-large electoral systems in jurisdictions with significant populations of people of color, as in Columbus, have been struck down as violative of Section 2.²¹

Fortunately, the city council is expressly empowered under Ohio law²² to move swiftly to advance an alternative method of election, such as the use of single-member districts, to ensure equal participation for all of Columbus’ residents. Single-member districts are a common, though not the only, potential remedy to dilutive at-large voting schemes.²³ For example, the court ordered the use of single-member districts in Euclid to address the aforementioned Section 2 violation.²⁴ While a proposal to create single-member districts in Columbus was defeated in a special election on August 2, 2016, only 9% of voters turned out to vote in that election.²⁵

We understand that in the face of sustained advocacy to change the electoral method for this body, the city council formed a committee to study this issue in 2016. Indeed, that committee acknowledged that the “[t]he current size and structure of Columbus City Council has been unchanged since adoption of the Columbus City Charter in 1914,” and documented the many

¹⁹ Chief Baba Shongo, *CMHA tries to erase black history: Poindexter Village History Advisory Group cries “foul”*, Free Press.Org (Dec. 4, 2012), <http://freepress.org/article/cmha-tries-erase-black-history-poindexter-village-history-advisory-group-cries-foul>

²⁰ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

²¹ *E.g.*, *Euclid*, 580 F. Supp. 2d at 595, 612; *see also, e.g., Fayette Cty. Bd. of Comm’rs*, 118 F. Supp. 3d at 1348, 1351; *Ga. State Conf. of NAACP v. Fayette Cty. Bd. of Comm’rs*, 950 F. Supp. 2d 1294, 1300 (N.D. Ga. 2013) (noting that only 20 out of 180 school districts in Georgia elect all school board members on an at-large basis), *aff’d in part, rev’d in part, and vacated in part on other grounds*, 775 F.3d 1336 (11th Cir. 2015). In Ohio, other jurisdictions use other methods of election. *See, e.g.*, Cleveland, Ohio Code ch. 5, §§ 24-26 (2016); Hilliard, Ohio Code § 103.01 (2016).

²² *See, e.g.*, Ohio Const. art. XVIII, §§ 7, 9 (municipal charter; amendments to charter referendum); Ohio Rev. Code Ann. § 731.06 (division of city into wards); *id.* § 731.17 (procedure for municipal governments to pass ordinances and resolutions); *id.* § 731.28 (procedure for ordinances and measures proposed by initiative petition); *id.* § 731.29 (“No such ordinance or measure shall go into effect until approved by the majority of those voting upon it.”); *see also Columbus City Charter, supra* note 2, § 45, Ord. No. 1748-2014 (“Proposed amendments to this charter may be submitted to the electors of the city by a two-thirds vote of the council and such submission shall be by ordinance.”).

²³ *See, e.g., Large v. Fremont County*, 670 F.3d 1133, 1148 (10th Cir. 2012); *Citizens for Good Gov’t v. City of Quitman*, 148 F.3d 472, 476 (5th Cir. 1998); *Williams v. City of Texarkana*, 32 F.3d 1265, 1268 (8th Cir. 1994); *Euclid*, 523 F. Supp. 2d at 644; *see also Mo. State Conf. of NAACP v. Ferguson-Florissant Sch. Dist.*, 219 F. Supp. 3d 949, 961 (E.D. Mo. 2016) (ordering an at-large cumulative voting system to remedy dilutive at-large voting scheme).

²⁴ *Euclid*, 523 F. Supp. 2d at 647.

²⁵ *See Sullivan, supra* note 14 (reporting that a proposal to expand the city council by two seats and create single-member districts was defeated in a special election in which only 9% of voters turned out to vote).

efforts over various years to change the structure.²⁶ However, the committee recently recommended maintaining the at-large voting system, although it has proposed enlarging the size of the city council to nine members and instituting a requirement that each member reside in a different ward.²⁷ While this proposed voting structure may create the perception that voters will have a representative chosen by a neighborhood community, the maintenance of the underlying at-large voting scheme for all members of the city council will likely continue to unfailingly diminish the voices of Black voters in Columbus. While this issue was tabled in 2017, reportedly the council may revisit it in 2018.²⁸

Accordingly, we urge the city council to consider an alternative electoral method for the benefit of all of Columbus' citizens and to ensure that the city is in compliance with Section 2 and other applicable laws. Indeed, we welcome the opportunity to work with you to resolve this important matter amicably. **We also request a response to this letter in writing by Monday, December 18, 2017.**

Please feel free to reach out to me directly with any questions.

Sincerely,



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²⁶ Stefanie L. Coe, *To the Members of Council and Mayor Ginther*, 2016 Charter Review Committee final report at 2, 4 https://www.columbus.gov/uploadedFiles/Columbus/Elected_Officials/City_Council/Charter_Review_Commission/2016_Committee/2016%20Charter%20Review%20Committee%20final%20report.pdf; see also *Columbus Charter Review Committee*, YouTube (Feb. 16, 2017) <https://www.youtube.com/watch?v=mQXKRTuPVLk>

²⁷ Coe, *supra* note 26 at 4-5; see also Rick Rouan, *Citizen commission could redraw Columbus council boundaries*, The Columbus Dispatch (June 27, 2017, 4:21 PM), <http://www.dispatch.com/news/20170627/citizen-commission-could-redraw-columbus-council-boundaries>; Rick Rouan, *Columbus City Council halts ballot proposal to add seats, create districts*, The Columbus Dispatch (July 24, 2017, 9:15 PM), <http://www.dispatch.com/news/20170724/columbus-city-council-halts-ballot-proposal-to-add-seats-create-districts>

²⁸ Ferenchik, *supra* note 16.

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