

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF GEORGIA

NEWNAN DIVISION

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U.S.D.C. - Newnan

GEORGIA STATE CONFERENCE OF THE NAACP;  
FAYETTE COUNTY BRANCH NAACP; HENRY  
ADAMS; TERENCE CLARK; ALICE JONES; JOHN  
E. JONES; DAN LOWRY; ALI ABDUR-RAHMAN;  
AISHA ABDUR-RAHMAN; LELIA RICHARDSON;  
EMORY WILKERSON; ELVERTA WILLIAMS; and  
BONNIE LEE WRIGHT.

AUG 09 20~\ \\  
James N. Ratte ~r)i  
By: Deputy Clerk

Plaintiffs,

COMPLAINT

v.

Civ. No. \_

FAYETTE COUNTY BOARD OF  
COMMISSIONERS; HERB FRADY,  
CHAIRPERSON, in his official capacity; ROBERT  
HORGAN, VICE-CHAIRPERSON, in his official  
capacity; LEE HEARN, COMMISSIONER, in his  
official capacity; STEVE BROWN, COMMISSIONER,  
in his official capacity; and ALLEN MCCARTY,  
COMMISSIONER, in his official capacity; FAYETTE  
COUNTY BOARD OF EDUCATION; BOB TODD,  
BOARD MEMBER, in his official capacity; MARION  
KEY, BOARD MEMBER, in her official capacity;  
JANET SMOLA, BOARD MEMBER, in her official  
capacity; TERRI SMITH, BOARD MEMBER, in her  
official capacity; and SAM TOLBERT, BOARD  
MEMBER, in his official capacity; FAYETTE  
COUNTY BOARD OF ELECTIONS AND VOTER  
REGISTRATION; TOM SAWYER, DEPARTMENT  
HEAD, in his official capacity,

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Defendants.

## INTRODUCTION

Plaintiffs assert that Defendants' at-large method of electing members to the Fayette County Board of Commissioners and Board of Education violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973 ("Section 2"). The essence of Plaintiffs' Complaint is that, despite the fact that (1) voting age Black residents of Fayette County reside in substantial numbers in a geographically compact area in the northeastern part of the County; and (2) Black residents' voting patterns are politically cohesive in elections involving candidates to both the Fayette County Board of Commissioners and Board of Education, no Black candidate has ever been elected to either body. Plaintiffs assert that Fayette County's at-large method of electing members to these boards, given the levels of racially polarized voting, guarantees precisely this result.

This action seeks to enjoin the continued use of at-large voting for the Fayette County Board of Commissioners and Board of Education, thereby eliminating a voting practice that has discriminatory effects on the voting strength of Fayette County's Black community.

Plaintiffs GEORGIA STATE CONFERENCE OF THE NAACP, FAYETTE COUNTY BRANCH NAACP, HENRY ADAMS, TERENCE CLARK, ALICE JONES, JOHN E. JONES, DAN LOWRY, ALI ABDUR-

RAHMAN, AISHA ABDUR-RAHMAN, LELIA RICHARDSON, EMORY WILKERSON, ELVERTA WILLIAMS, and BONNIE LEE WRIGHT (collectively, "Plaintiffs"), through their undersigned counsel, for their Complaint for declaratory and injunctive relief against Defendants FAYETTE COUNTY BOARD OF COMMISSIONERS ("BOC"); HERB FRADY, BOC Chairperson, in his official capacity; ROBERT HORGAN, BOC Vice-Chairperson, in his official capacity; LEE HEARN, STEVE BROWN, and ALLEN MCCARTY, BOC Commissioners, in their official capacities; FAYETTE COUNTY BOARD OF EDUCATION ("BOE"); BOB TODD, MARION KEY, JANET SMOLA, TERRI SMITH, and SAM TOLBERT, BOE Board Members, in their official capacities; FAYETTE COUNTY BOARD OF ELECTIONS AND VOTER REGISTRATION ("BOEVR"); and TOM SAWYER, BOEVR Department Head, in his official capacity (collectively, "Defendants"), allege the following upon knowledge, information, and belief:

1. This action is brought by Plaintiffs seeking injunctive and declaratory relief pursuant to Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973. Section 2 prohibits Defendants from applying or imposing any "voting qualification or prerequisite to voting or standard, practice, or procedure" that has either the purpose or the result of denying or abridging the right to vote "on

account of race or color." 42 U.S.C. § 1973(a).

2. Section 2's "totality of circumstances" standard calls for an examination of whether Black residents of Fayette County "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *See* 42 U.S.C. §1973(b).

3. Plaintiffs challenge Defendants' at-large method of electing members to the Fayette County Board of Commissioners and Board of Education on the ground that it dilutes Black voting strength, in violation of Section 2, 42 U.S.C. § 1973(b).

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1343(a), 28 U.S.C. § 1331, and 42 U.S.C. § 1973j(f).

5. This Court has jurisdiction to grant both declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

6. This Court has personal jurisdiction over the Defendants, all citizens of the State of Georgia.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this district.

## **PARTIES**

### **Plaintiffs**

8. GEORGIA STATE CONFERENCE OF THE NAACP (hereinafter, "Plaintiff Georgia NAACP") is a non-partisan, interracial membership organization founded in 1941 in Savannah, Georgia. Its mission is to ensure equal political, educational, social, and economic rights of all persons, and Blacks in particular, and to eliminate racial discrimination. In furtherance of its mission, Plaintiff Georgia NAACP has engaged in a wide range of activities, including advocating for the full and equal voting rights of Blacks and other communities of color in Georgia and supporting the enactment of major civil rights legislation, including the Voting Rights Act. Plaintiff Georgia NAACP's membership includes Alice Jones, Fayette County Branch NAACP President John E. Jones, Aisha Abdur-Rahman, Ali Abdur-Rahman, and Elverta Williams, as well as other Black registered voters who reside in an area of Fayette County that could constitute a single-member district containing a majority Black voting-age population, and whose voting strength is diluted by the Section 2 violations alleged herein. As such, Plaintiff Georgia NAACP is a proper party to vindicate the violation of its members' rights.

9. FAYETTE COUNTY BRANCH NAACP, a county branch of Plaintiff Georgia NAACP, is a non-partisan, interracial membership organization founded in 1997 in Fayette County, Georgia. Its mission is to ensure the elimination of racial discrimination in all spheres and to advocate for political, educational, social, and economic equality for all persons, and Blacks in particular. This Branch was founded, in part, to address the discriminatory nature of Fayette County's at-large voting scheme, and has devoted significant resources over the last fifteen years to achieve a state-level legislative solution. Fayette County Branch NAACP's membership includes Alice Jones and President John E. Jones, Aisha Abdur-Rahman, Ali Abdur-Rahman, and Elverta Williams, as well as other Black registered voters who reside in an area of Fayette County that could constitute a single-member district containing a majority Black voting-age population, and whose voting strength is diluted by the Section 2 violations alleged herein. As such, Fayette County Branch NAACP is a proper party to vindicate the violation of its members' rights.

10. HENRY ADAMS is a Black registered voter who is a resident of Fayette County, Georgia. Mr. Adams moved to Fayette County in 1991 and registered to vote in the county shortly thereafter. Since that time, the Board of Commissioners has disregarded Mr. Adams's support of district voting, which

he has expressed through testimony at a county commission meeting. As a result of the county's use of at-large voting, Mr. Adams, in election after election, has been unable to elect candidates of his choice to either the Board of Commissioners or the Board of Education, despite strong support and votes for those candidates from other Black voters in his community in Fayette County. Mr. Adams resides in an area of Fayette County that could constitute a single-member district containing a majority Black voting-age population, which would provide a remedy for the existing Section 2 violation.

11. **TERENCE CLARK** is a Black registered voter who is a resident of Fayette County, Georgia. Mr. Clark moved to Fayette County in 1993 and registered to vote in the county shortly thereafter. Since that time, as a result of the county's use of at-large voting, Mr. Clark, in election after election, has been unable to elect candidates of his choice to either the Board of Commissioners or the Board of Education, despite the strong support and votes for those candidates from other Black voters in his community in Fayette County. Mr. Clark resides in an area of Fayette County that could constitute a single-member district containing a majority Black voting-age population, which would provide a remedy for the existing Section 2 violation.

12. ALICE JONES is a Black registered voter who is a resident of Fayette County, Georgia. In 1997, Ms. Jones and her husband, Plaintiff John E. Jones, founded the Fayette County Branch NAACP. Since that time, the Board of Commissioners has ignored Ms. Jones's repeated public advocacy in support of district voting, which she has offered several times through testimony at county commission meetings and through other public fora. As a result of the county's use of at-large voting, Ms. Jones, in election after election, has been unable to elect candidates of her choice to either the Board of Commissioners or the Board of Education, despite strong support and votes for those candidates from other Black voters in her community in Fayette County. Without the ability to elect her preferred candidate, Ms. Jones, despite repeated attempts to draw attention to the needs of her district, has been unable to hold the Board of Commissioners accountable for being **insufficiently responsive to the interests of their constituents.** Ms. Jones lives in an area of Fayette County that could constitute a single-member district containing a majority Black voting-age, which would provide a remedy for the existing Section 2 violation.

13. JOHN E. JONES is a Black registered voter who is a resident of Fayette County, Georgia. In 1997, Mr. Jones and his wife, Plaintiff Alice Jones, founded the Fayette County Branch NAACP, of which Mr. Jones now serves as



President. As the first priority of the newly-formed Fayette County Branch NAACP, Mr. Jones sought to challenge the county's use of at-large voting, which prevented him, and other similarly-situated Blacks in the county, from electing preferred candidates to either the Board of Commissioners or the Board of Education. The Board of Commissioners has ignored Mr. Jones's repeated pleas—including his testimony at county commission meetings, letters to members of the Board of Commissioners, support for legislation, and newspaper articles—to adopt single-member districts, without which it would be nearly impossible to elect a Black candidate or a candidate supported overwhelmingly by Black voters to the Board of Commissioners or the Board of Education. Mr. Jones lives in an area of Fayette County that could constitute a single-member district containing a majority Black voting-age population, which would provide a remedy for the existing Section 2 violation.

14. DAN LOWRY is a Black registered voter who is a resident of Fayette County, Georgia. Mr. Lowry moved to Fayette County in 1989, and registered to vote in the county shortly thereafter. Since that time, the Board of Commissioners has ignored Mr. Lowry's repeated public pleas to adopt district voting, which he offered several times through testimony at county commission meetings, city hearings, and in other public fora. As a result of the county's use

of at-large voting, Mr. Lowry, in election after election, has been unable to elect candidates of his choice to either the Board of Commissioners or the Board of Education, despite strong support and votes for those candidates from other Black voters in his community in Fayette County. Mr. Lowry lives in an area of Fayette County that could constitute a single-member district containing a majority Black voting-age population, which would provide a remedy for the existing Section 2 violation.

15. ALI ABDUR-RAHMAN is a Black registered voter who is a resident of Fayette County, Georgia. Mr. Abdur-Rahman moved to Fayette County in 2005 and registered to vote in the county shortly thereafter. Since that time, Mr. Abdur-Rahman, in election after election, has been unable to elect candidates of his choice to either the Board of Commissioners or the Board of Education, despite strong support and votes for those candidates from other Black voters in his community in Fayette County, because of the county's at-large method of election. Mr. Abdur-Rahman lives in an area of Fayette County that could constitute a single-member district containing a majority Black voting-age population, which would provide a remedy for the existing Section 2 violation.

16. AISHA ABDUR-RAHMAN is a Black registered voter who is a resident of Fayette County, Georgia. Ms. Abdur-Rahman moved to Fayette County in 2005 and registered to vote in the county shortly thereafter. Since that time, Ms. Abdur-Rahman, in election after election, has been unable to elect candidates of her choice to either the Board of Commissioners or the Board of Education, despite strong support and votes for those candidates from other Black voters in her community in Fayette County, because of the county's at-large method of election. Ms. Abdur-Rahman lives in an area of Fayette County that could constitute a single-member district containing a majority Black voting-age population, which would provide a remedy for the existing Section 2 violation.

17. LELIA RICHARDSON is a Black registered voter who is a resident of Fayette County, Georgia. Ms. Richardson moved to Fayette County in 2003 and registered to vote in the county shortly thereafter. Since that time, Ms. Richardson, in election after election, has been unable to elect candidates of her choice to either the Board of Commissioners or the Board of Education, despite strong support and votes for those candidates from other Black voters in her community in Fayette County, because of the county's at-large method of election. Ms. Richardson lives in an area of Fayette County that could

constitute a single-member district containing a majority Black voting-age population, which would provide a remedy for the existing Section 2 violation.

18. EMORY WILKERSON is a Black registered voter who is a resident of Fayette County, Georgia. Mr. Wilkerson moved to Fayette County in 1998, and registered to vote in the county shortly thereafter. Since that time, in election after election, Mr. Wilkerson has been unable to elect candidates of his choice to either the Board of Commissioners or the Board of Education, despite strong support and votes for those candidates from other Black voters in his community in Fayette County, because of the county's at-large method of election. Indeed, Mr. Wilkerson's attempt in 2006 to fill the vacant seat on the County Board of Commissioners was similarly unsuccessful. Mr. Wilkerson lives in an area of Fayette County that could constitute a single-member district containing a majority Black voting-age population, which would provide a remedy for the existing Section 2 violation.

19. ELVERTA WILLIAMS is a Black registered voter who is a resident of Fayette County, Georgia. Ms. Williams moved to Fayette County in 1998, and registered to vote in the county shortly thereafter. Since that time, Ms. Williams, in election after election, has been unable to elect candidates of her choice to either the Board of Commissioners or the Board of Education, despite

strong support and votes for those candidates from other Black voters in her community in Fayette County, because of the county's at-large method of election. Ms. Williams lives in an area of Fayette County that could constitute a single-member district containing a majority Black voting-age population in order to provide a remedy for the existing Section 2 violation.

20. BONNIE LEE WRIGHT is a Black registered voter who is a resident of Fayette County, Georgia. Ms. Wright moved to Fayette County in 2002, and registered to vote in the county shortly thereafter. Since that time, Ms. Wright, in election after election, has been unable to elect candidates of her choice to either the Board of Commissioners or the Board of Education, despite strong support and votes for those candidates from other Black voters in her community in Fayette County, because of the county's at-large method of election. Ms. Wright lives in an area of Fayette County that could constitute a single-member district containing a majority Black voting-age population, which would provide a remedy for the existing Section 2 violation.

### **Defendants**

21. Fayette County is a geographical and political subdivision of the State of Georgia located within the Northern District of Georgia, Newnan Division. Defendants are the -county officials charged with ensuring Fayette County's

compliance with applicable state and federal voting laws, including the Voting Rights Act.

22. Defendant Fayette County Board of Commissioners ("BOC"), established under the Georgia Constitution and the Official Code of Georgia, is the governing authority of the county. Ga. Code Ann. § 36-5-20 (2011). Defendant BOC provides local government services in Fayette County and has the legislative power to adopt laws affecting its affairs and local government. Defendant BOC has the authority to recommend that the Georgia state legislature adopt single-member districts in Fayette County. Ga. Const. art. IX, § 2, para. 1.

23. Defendants Herb Frady, Robert Horgan, Lee Hearn, Steve Brown, and Allen McCarty are the members of the Fayette County Board of Commissioners. Each Defendant is sued in his official capacity.

24. Defendant Fayette County Board of Education ("BOE") is the body responsible for the governance and administration of the Fayette County School District, which is a political subdivision of the State of Georgia. Ga. Code Ann. § 20-2-50 (2011).

25. Defendants Bob Todd, Marion Key, Janet Smola, Terri Smith, and Sam Tolbert are the members of the Fayette County Board of Education. Each Defendant is sued in his or her official capacity.

26. Defendant Fayette County Board of Elections and Voter Registration ("BOEVR") has statutory powers, duties and responsibilities concerning the conduct of elections held in Fayette County; it oversees and is responsible for the administration of elections in the county, including elections for both the Board of Commissioners and the Board of Education under the at-large method of election at issue in this case. O.C.G.A. § 21-2-40 (2011).

27. Defendant Tom Sawyer is the Department Head of the Fayette County Board of Elections and Voter Registration. Defendant Sawyer is sued in his official capacity.

### **Section 2 of the Voting Rights Act**

28. Section 2 of the Voting Rights Act, 42 U.S.C. § 1973(a), prohibits Defendants from applying or imposing any "voting qualification or prerequisite to voting or standard, practice, or procedure" that "results in denial or abridgement of the right of any citizen of the United States to vote on account of race or color."

29. In addition to prohibiting practices that directly deny the exercise of the right to vote, **Section 2 prohibits vote dilution**, which is the use of an electoral scheme-such as Fayette County's at-large method-that weakens the voting strength of minority voters, and consequently denies those voters an opportunity to elect a candidate of their choice. 42 U.S.C. § 1973(b). Here, the district at issue is the entirety of Fayette County.

30. Defendants' current at-large method of electing the members of Fayette County's Board of Commissioners and Board of Education violates Section 2 of the Voting Rights Act because it denies Fayette County's minority group of Black residents an equal opportunity to participate in the political process and to elect representatives of their choice.

### **Fayette County's Demographics**

31. **According to the 2010 Census, the total population of Fayette County was 106,567 people. Of this total population 75,802 are white (71.1%), and 21,395 are Black (20.1 %).**

32. **According to the 2010 Census, Fayette County's total voting-age population is 78,468, of whom 57,766 are white (73.6%), and 15,247 are Black (19.5%).**



33. According to the School District Demographics System, based upon data from the 2010 Census, the Fayette County School District serves approximately 6,487 students who are Black or African American, and 18,003 who are white. Students of color (including Black, Latino, Asian, Hawaiian/Pacific Islander, and multiracial students, as well as students who identify as "other") account for approximately 39.4% of the Fayette County School District.

#### **Fayette County Board of Commissioners' Method of Elections**

34. All five members of the Defendant Board of Commissioners are elected at-large, subject to certain residency requirements: three commissioners run for one of three numbered post positions and must reside in one of three separate corresponding residency districts, while the other two positions can be filled by candidates who live anywhere in the county.

35. The members of the Board of Commissioners serve four-year, staggered terms, with an election occurring every two years. In elections for the Board of Commissioners, a partisan primary is held to determine which candidates qualify for the general election. The top finishers in the primaries then advance to the general election; the top finishers from the general election are, in turn, elected to the Board of Commissioners.

36. Defendant BOC Chairperson Herb Frady represents Numbered PostlResidence District 2; BOC Vice Chairperson Robert Horgan represents Numbered PostlResidence District 1; BOC member Lee Hearn represents Numbered PostlResidence District 3; and BOC members Steve Brown and Allen McCarty hold the at-large positions.

### **Fayette County Board of Education's Method of Elections**

37. Fayette County's method for electing the Board of Education is largely analogous to the method for electing the Board of Commissioners. All five members of the Defendant Board of Education are elected at-large, subject to a specific residency requirement: each individual member runs for one of five numbered post positions (or "education districts") and must reside within the education district for which he or she is a candidate.

38. The members of the Board of Education serve four-year, staggered terms, such that no more than three seats are up for election at any given time. In elections for the Board of Education, a partisan primary is held to determine which candidates qualify for the general election. In the primary elections, the top finishers for each position advance to the general election, and the top finishers in the general election are seated on the Board of Education.

39. Defendant BOE Chairman Bob Todd represents Numbered PostlEducational District 4; BOE member Marion Key represents Numbered PostlEducational District 3, and BOE members Janet Smola, Terri Smith and Sam Tolbert represent Numbered PostlEducational Districts 1, 2, and 5, respectively.

40. Defendant Fayette County Board of Education's stated vision is to prepare its approximately 29,273 students, nearly 22% of whom are Black, to "liv[e] and work[] effectively, responsibly and productively in a global environment." Fayette County Board of Education, *Vision, Mission & Belief Statements*, available at [http://www.fcboe.org/index.php?option=com\\_content&view=article&id=170:vision-mission-belief-statements&catid=37:mission-and-belief-statements&Itemid=58](http://www.fcboe.org/index.php?option=com_content&view=article&id=170:vision-mission-belief-statements&catid=37:mission-and-belief-statements&Itemid=58) (last visited Aug. 9, 2011). In practice, however, the racial composition of the Board of Education itself evinces the considerable distance between its stated theory and practice, as no Black person has ever been elected to serve on the Board of Education.

### ***Thornburg v. Gingles* Preconditions**

41. The Supreme Court, in *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986), identified three necessary preconditions, each of which Plaintiffs satisfy, for a claim that a voting practice results in actionable vote dilution under Section 2:

(1) the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district," (2) the minority group must be "politically cohesive," and (3) the majority must vote "sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate."

42. Fayette County's Black population is sufficiently numerous and geographically compact to allow for the creation of a properly apportioned single-member district for electing members of the Board of Commissioners and Board of Education in which Black voters would constitute a majority of both the total population and the voting-age population.

43. Elections in Fayette County show a clear pattern of racially polarized voting. Although Black voters are politically cohesive, bloc voting by other members of the electorate consistently defeats Black-preferred candidates.

Indeed, non-Black members of the electorate have consistently voted as a bloc so as to defeat every Black-preferred candidate for Board of Commissioners or Board of Education.

44. The 2010 Board of Education general election, for example, provided a recent example of the manner in which non-Black bloc voting in Fayette County operates to defeat Black candidates. In that election, in which the incumbent did not run for re-election, Laura Burgess, a Black college professor,

received near-unanimous support from Black voters (99 percent) but less than 20 percent of white votes. Ms. Burgess ultimately lost the election to a white candidate.

45. Another recent example is the 2006 Board of Commissioners special election to fill the vacancy left by a commissioner who died while in office and whose term was not due to expire until 2008. Three Republican candidates ran for this seat, including two Black candidates (Plaintiff Emory Wilkerson, Vice Chairman of the County's Republican Party and an attorney, and Malcolm Hughes, a Certified Public Accountant) and one white candidate, Robert Horgan. Two Black Democratic candidates also ran (Wendi Felton, a small business owner, and Charles Rousseau, Assistant Director of Design and Planning for Fulton County Parks and Recreation). Ultimately, Robert Horgan, the only white candidate and not the preferred candidate of choice among Black voters, garnered 51.70% of the total vote to win the election, defeating all four Black candidates.

46. The victory of Robert Horgan, a political novice, triggered a wave of criticism. For his part, Robert Horgan said he ran "to maintain and preserve the heritage we have in our county." Kevin Duffy, *SPECIAL ELECTION:*

"Heritage" theme wins for Horgan, Atlanta J. - Const., Mar. 23, 2006, at IJM (internal quotation marks omitted).

## **Section 2 of the Voting Rights Act's Totality of the Circumstances Analysis**

47. In addition to satisfying the *Gingles* preconditions, Plaintiffs can also demonstrate that the totality of the circumstances show that Black residents of Fayette County have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. See 42 U.S.C. §1973(b).

48. As a result of the discriminatory practices alleged in ¶¶ 34-46, no Black candidate has ever been elected to the Fayette County Board of Commissioners or Board of Education.

49. Magistrate Judge Charles Floyd stands as the *only* Black person to have held elected office in the history of Fayette County, a feat that followed his appointment to the bench in 2002, and subsequent successful reelection as an incumbent. Since his death in 2010, the county again has no Black elected officers.

50. Blacks in Fayette County have suffered and continue to suffer discrimination, including a history of neglect by unresponsive elected officials, and bear the effects of that discrimination today.

51. For example, at a special Fayette Board of Commissioners meeting called to discuss reapportionment in 2007, Plaintiff Alice Jones introduced a resolution that called for the implementation of a district-based voting plan. Highlighting the fundamental unfairness and lack of accountability of Fayette County's at-large system, Ms. Jones described how her majority Black neighborhood had been neglected for road and street improvements, green space acquisition, recreational space, and other critical services. In her accompanying testimony, Ms. Jones cited the Board's failure to expend necessary resources to properly maintain a park in a Black neighborhood in her area---an action that she, over the course of multiple Board meetings, repeatedly urged the Board to take---as one example of the Board's non-responsiveness to its community, justifying the need to ensure adequate representation through district-based voting.

52. In 2005, State Representative Virgil Fludd sponsored a bill in the state legislature dividing Fayette County into five single-member districts, with one commissioner being elected from each district.

53. In response to Representative Fludd's bill, the Fayette County Board of Commissioners held a special meeting and formally adopted a resolution condemning it.

54. Thereafter, Fayette Commissioner Chairman Gregg Dunn stated that the Board, as the representative of its constituents, heard no great support for a change from the current system to district voting for the election of its membership. He criticized proponents of the bill as "trying to achieve through Legislation what they could not achieve at the ballot box."

55. In 2008, Representative Fludd again sponsored a bill in the state legislature that would divide Fayette County into five single-member districts, with one commissioner being elected from each district. Representative Fludd's 2008 bill was also defeated.

56. Political campaigns in Fayette County have been and continue to be characterized by subtle and overt racial appeals, including, but not limited to, Defendant Commissioner Horgan's "heritage" appeal described in ¶ 46 above.

57. In addition to using at-large elections, Fayette County also employs tactics that impair Black electoral success in both Board of Commissioners and Board of Education elections, including, but not limited to, numbered posts, residency requirements, staggered terms, and a majority vote requirement.

58. Unless enjoined by order of this Court, Defendants will continue to violate Section 2 by conducting future elections for the Fayette County's Board of Commissioners and Board of Education pursuant to the current at-large method.



**CLAIM FOR RELIEF**

59. Plaintiffs hereby re-allege and incorporate by reference Paragraphs 1 - 58 above.

60. Under the totality of the circumstances, Fayette County's at-large method of electing members to the County Board of Commissioners and Board of Education has the effect of diluting Black voting strength, resulting in Black voters being denied an equal opportunity to participate in the political process and to elect representatives of their choice, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

61. Unless enjoined by order of this Court, Defendants will continue to act in violation of Section 2 of the Voting Rights Act by administering, implementing, and conducting future elections for the County Board of Commissioners and Board of Education using an at-large method of election.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs respectfully pray that the Court enter an order:

(a) Declaring that Fayette County's at-large method of electing members to the County Board of Commissioners violates Section 2 of the Voting Rights Act;

(b) Declaring that Fayette County's at-large method of electing members

to the County Board of Education violates Section 2 of the Voting Rights Act;

(c) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with, or as an agent of, any Defendants in this action, from administering, implementing, or conducting any future elections in Fayette County under the current at-large method of electing County Board of Commissioners;

(d) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with, or as an agent of, any Defendants in this action, from administering, implementing, or conducting any future elections in Fayette County under the current at-large method of electing Board of Education members;

(e) Ordering the implementation of an election system for the Fayette County Board of Commissioners that complies with Section 2 of the Voting Rights Act, 42 U.S.C. § 1973;

(f) Ordering the implementation of an election system for the Fayette County Board of Education that complies with Section 2 of the Voting Rights Act, 42 U.S.C. § 1973; and

(g) Ordering such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.

Dated: August 9, 2011

Respectfully submitted,

NAACP LEGAL DEFENSE &  
EDUCATIONAL FUND, INC.

John Payton, *Director-Counsel*

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Ryan P. Haygood

Dale Ho

Natasha M. Korgaonkar

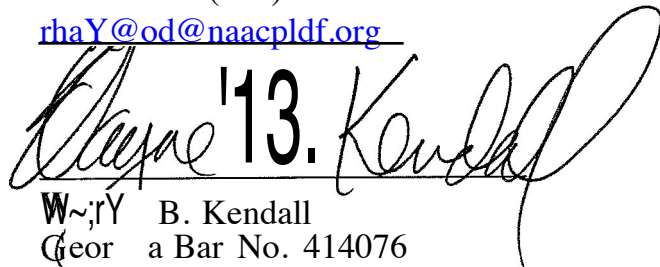
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