

Ceesha Lofton - Questions from NAACP LDF for Advisory Task Force on Composition of Judicial Districts

From: Leah Aden <laden@naacpldf.org>
To: "Judge.Telford.Forgety@tncourts.gov" <Judge.Telford.Forgety@tncourts.gov...>
Date: 9/15/2019 12:57 PM
Subject: Questions from NAACP LDF for Advisory Task Force on Composition of Judicial Districts
Cc: "lt.gov.randy.mcally@capitol.tn.gov" <lt.gov.randy.mcally@capitol.tn.g...>
Attachments: NAACP LDF Questions for TN Advisory Task Force on Composition of Judicial Districts_09.15.2019 (final).pdf

Dear Chair Forgety:

With the enclosed letter, the NAACP Legal Defense and Educational Fund, Inc. writes to pose a list of questions to the members of the Tennessee's Advisory Task Force on the Composition of Judicial Districts. We request that you address these questions during tomorrow's September 16, 2019 meeting.

Thank you.

(end)

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September 15, 2019

By Email & Certified Mail

Telford E. Forgety, Chair
Advisory Task Force on the Composition of Judicial Districts
511 Union Street, Suite 600
Nashville, TN 37219
Judge.Telford.Forgety@tncourts.gov
judicialdistrictstaskforce@tncourts.gov

Re: Advisory Task Force on the Composition of Judicial Districts

Dear Chair Forgety:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”)¹ writes to pose the following list of questions to the members of the Tennessee’s Advisory Task Force on the Composition of Judicial Districts (“Task Force”). We request that you address these questions during your September 16, 2019 meeting:

1. In a letter dated July 24, 2019, the NAACP Legal Defense and Educational Fund, Inc. called the Task Force’s attention to the fact that it is empowered to “propose the creation of new judgeships that comply with the VRA and U.S. Constitution where a judicial district’s caseload and other features warrant it.”² In West Tennessee and potentially elsewhere in the state, there is likely an opportunity to

¹ Since its founding in 1940 by Thurgood Marshall, LDF has been a pioneer in the struggle to secure and protect the voting rights of Black people and other people of color through legal, legislative, public education, and other advocacy strategies that promote the full, equal, and active participation of Black people in America’s democracy. LDF has been involved in much of the precedent-setting litigation related to securing the rights of people of color to be free from discriminatory voting schemes, including in the methods of electing state-court judges. *See, e.g., Terrebonne Parish Branch NAACP, et al., v. Edwards, et al.*, 274 F. Supp. 3d 395, 461 (M.D. La. 2017) (LDF successfully challenging Louisiana’s at-large voting system for the 32nd Judicial District Court with jurisdiction over Terrebonne Parish, as having a discriminatory purpose and results under Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the U.S. Constitution); *Hunt v. Arkansas*, No. PB-C-89-406, 1991 WL 12009081, at *1 (E.D. Ark. Nov. 7, 1991) (LDF successfully obtaining a court order creating majority-Black judicial subdistricts after Arkansas admitted liability under Section 2 of the VRA); *Chisom v. Roemer*, 501 U.S. 380, 384 (1991) (LDF successfully arguing that Section 2 of the VRA applies to judicial elections).

LDF has been a separate entity from the NAACP and its state and local branches since 1957.

² Letter from Leah Aden, et al., LDF, to Lieutenant Governor and Speaker McNally, Speaker Casada, and Chair Forgety (July 24, 2019), https://www.naacpldf.org/wp-content/uploads/NAACP-LDF-Ltr.-re-TN-Advisory-Task-Force-on-Composition-of-Judicial-Districts_07-24-2019_final_.pdf.

create new judicial positions that would provide Black voters a more equal opportunity to elect candidates of their choice in judicial elections. We request the Task Force’s consideration of and response to the following questions:

- a. Do you plan to consider the importance of “[e]nsuring that public institutions are open and available to all segments of American society, including people of all races and ethnicities,” which the Tennessee Supreme Court has described as “a paramount government objective,” in your assessment of the need for additional judgeships?³
 - b. Do you plan to consider and act on our recommendation to create one or more additional judgeships in West Tennessee as a step towards better achieving this objective?⁴
2. As an attachment to the August 19, 2019 meeting, the Task Force published a document titled “Tennessee State Judges – Diversity,” which confirms the “shameful absence of diversity across all tiers of Tennessee’s judiciary” that LDF first brought to the Task Force’s attention in February.⁵ According to this document, only 15 out of Tennessee’s 156 state trial-level judges are Black. There are zero Asian or Latinx judges in Tennessee’s state trial-level courts. Outside of the 20th and 30th judicial districts, 100% of trial-level judges are white people. We request the Task Force’s consideration of and response to the following questions:
- a. What is the Task Force’s position as to whether these numbers are acceptable?
 - b. Does the Task Force agree that this striking lack of diversity can likely be traced in part to the electoral lines along which Tennessee’s current judicial districts are drawn?⁶
 - c. What actions, if any, is the Task Force taking to promote gender, racial, ethnic, economic, and other forms of diversity in Tennessee’s judiciary?

³ *Bredesen v. Tennessee Judicial Selection Comm’n*, 214 S.W.3d 419, 438 (Tenn. 2007).

⁴ We are currently reviewing the WebEx video recording of the Task Force’s August 19, 2019 meeting, in which you discuss our letters and proposed judicial district with Hardeman, Haywood, and Madison Counties. We are likely to follow up in more detail in response to that proceeding.

⁵ Letter from Leah Aden, et al., LDF, to Lieutenant Governor and Speaker McNally, Speaker Casada, and Chair Forgety (Feb. 26, 2019), https://www.naacpldf.org/wp-content/uploads/Letter-re-TN-Advisory-Task-Force-on-Composition-of-Judicial-Districts_2.26.19.pdf.

⁶ In 1996, the Louisiana Task Force on Racial and Ethnic Fairness, created by the Louisiana Supreme Court, issued a report which concluded that the establishment of “subdistricts, where appropriate, [is] the only feasible means of ensuring diversity and ethnic heterogeneity in [Louisiana’s] judicial system.” (report on file with LDF).

3. According to the minutes of the Task Force's March 25, 2019 meeting, during that meeting, "Chairman Forgety indicated he would reach out the TBA Committee on Racial and Ethnic Diversity, as well as the Tennessee Black Caucus of State Legislators. Without objection, both groups were added to the list of groups/organizations solicited by the Task Force to provide input and comment." We request the Task Force's consideration and response to the following questions:
 - a. Has the Task Force actively solicited input from these groups?
 - b. What have been the results of that consultation?
 - c. Does the Task Force consider these results satisfactory? If not, what further actions does the Task Force propose to take to ensure that it receives input from a diverse cross-section of the Tennessee voters and citizens who will be affected by its proposals?

After giving these questions their due consideration during the Task Force's September 16, 2019 meeting, we request that you respond *in writing* to the concerns raised herein and in our previous correspondence by **Friday, September 27, 2019**.

Sincerely,



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CC: Lisa Cylar Barrett, Director of Policy, LDF
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William B. Lee, Governor of Tennessee
(via online portal: <https://www.tn.gov/governor/contact-us.html>)

Randy McNally, Lieutenant Governor and Speaker of the Senate of Tennessee
(*via* email: lt.gov.randy.mcnally@capitol.tn.gov)

Cameron Sexton, Speaker of the Tennessee House of Representatives
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Representative G.A. Hardaway, Chair, Tennessee Caucus of Black Legislators
(*via* email: rep.ga.hardaway@capitol.tn.gov)

Beverly Watts, Executive Director, Tennessee Human Rights Commission
(*via* email: ask.thrc@tn.gov)

Terica Smith, Chair, Committee on Racial and Ethnic Diversity, Tennessee Bar
Association
(*via* email: [REDACTED])

Gloria Sweet-Love, President Tennessee State Conference of NAACP
(*via* mail, 27 Brentshire Square, Suite A, Jackson, TN 38305)

Harrell Carter, President Jackson-Madison County Conference of NAACP
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