

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF LOUISIANA**

TERREBONNE PARISH BRANCH NAACP;
REVEREND VINCENT FUSILIER, SR.;
LIONEL MYERS; WENDELL DESMOND
SHELBY, JR.; and DANIEL TURNER,

Plaintiffs,

v.

PIYUSH (“BOBBY”) JINDAL, the GOVERNOR
of the STATE OF LOUISIANA, in his official
capacity; JAMES D. (“BUDDY”) CALDWELL,
the ATTORNEY GENERAL of the STATE OF
LOUISIANA, in his official capacity; and TOM
SCHEDLER, the SECRETARY OF STATE of
the STATE OF LOUISIANA, in his official
capacity,

Defendants.

COMPLAINT

Civ. No. 3:14-cv-69

INTRODUCTION

Plaintiffs assert that Defendants’ use of at-large voting to maintain a racially segregated 32nd Judicial District Court (“32nd Judicial District”) violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973 (“Section 2”), and the voting guarantees of the Fourteenth and Fifteenth Amendments of the United States Constitution. Plaintiffs contend that these statutory and constitutional violations are demonstrated by the fact that, although (1) voting-age Black residents of the 32nd Judicial District, which encompasses Terrebonne Parish (or “Terrebonne” or “Parish”), are sufficiently numerous and geographically compact to form a majority of the voting-age population in a single-member district in the Parish, and (2) Black residents’ voting patterns are politically cohesive in elections involving Parish voters, a Black-preferred candidate

of choice has never been elected to the 32nd Judicial District in the nearly two century history of Terrebonne Parish.

Given the levels of racially polarized voting in the Parish, Defendants' at-large method of electing members for the 32nd Judicial District guarantees precisely this result. This action seeks to enjoin Defendants' continued use of at-large voting for the 32nd Judicial District, and to eliminate a voting practice that was enacted and/or has been maintained with a discriminatory purpose, and that dilutes the voting strength of Black voters in Terrebonne Parish.

Plaintiffs Terrebonne Parish Branch NAACP, Reverend Vincent Fusilier, Sr., Lionel Myers, Wendell Desmond Shelby, Jr., and Daniel Turner (collectively, "Plaintiffs"), through their undersigned counsel, file this Complaint for declaratory and injunctive relief, pursuant to Section 2 of the Voting Rights Act, 42 U.S.C. § 1973(a), against Defendants Piyush ("Bobby") Jindal, the Governor of the State of Louisiana, in his official capacity; James D. ("Buddy") Caldwell, the Attorney General of the State of Louisiana, in his official capacity; and Tom Schedler, the Secretary of State, in his official capacity (collectively, "Defendants"). Plaintiffs seek to enforce their voting rights, guaranteed by the Fourteenth and Fifteenth Amendments to the U.S. Constitution. U.S. Const., amends. XIV & XV.

Plaintiffs allege the following upon knowledge, information, and belief:

1. 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 requires an examination of whether Black residents of Terrebonne Parish "have less opportunity than other members of the

electorate to participate in the political process and to elect representatives of their choice.” 42 U.S.C. §1973(b).

3. Defendants’ at-large method of electing members for the 32nd Judicial District dilutes the voting strength of Black voters in Terrebonne Parish in violation of Section 2. *Id.*

4. Defendants’ at-large method of electing members for the 32nd Judicial District was enacted and/or maintained with a discriminatory purpose in violation of Section 2, and the Fourteenth and Fifteenth Amendments of the U.S. Constitution. *Id.*; U.S. Const. amends. XIV & XV.

JURISDICTION AND VENUE

6. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1343(a), 1357, and 42 U.S.C. §§ 1973, 1973j(f), 1983, and 1988.

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

8. This Court has personal jurisdiction over Defendants, all of whom are citizens of the State of Louisiana.

9. 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

10. TERREBONNE BRANCH NAACP (hereinafter, “Plaintiff Terrebonne NAACP”) is a non-profit, non-partisan, interracial membership organization founded in 1984 in Terrebonne Parish, Louisiana. Plaintiff Terrebonne NAACP is a local branch of the National Association for

the Advancement of Colored People (NAACP),¹ and, consistent with the NAACP's mission, seeks to ensure equal political, educational, social, and economic rights of all persons, and Black people in particular, and to eliminate racial discrimination. In furtherance of its mission, Plaintiff Terrebonne NAACP advocates for the full and equal voting rights of Black people and other communities of color in Louisiana, generally, and Terrebonne, specifically.

11. Plaintiff Terrebonne NAACP has devoted significant resources for more than sixteen years to secure a legislative solution to Defendants' discriminatory at-large electoral method of electing judges for the 32nd Judicial District. Plaintiff Terrebonne NAACP has, for example, repeatedly urged the state legislature, among others, to adopt a district-based voting method for electing judges for the 32nd Judicial District that contains at least one district in which Black voters comprise a majority of the voting-age population.

12. Plaintiff Terrebonne NAACP's membership includes individual Plaintiffs Reverend Vincent Fusilier, Sr.; Lionel Myers; Daniel Turner, an executive board member of Plaintiff Terrebonne NAACP; and Wendell Desmond Shelby, Jr., a member of Plaintiff Terrebonne NAACP's youth council since approximately 2008. Other members include numerous Black registered voters who reside in an area of Terrebonne Parish, in which Black voters could comprise a majority of the voting-age population in at least one district, and whose voting strength is diluted by the Section 2 and constitutional violations alleged herein. As such, Plaintiff Terrebonne NAACP is a proper party to vindicate the violations of its members' voting rights.

13. REVEREND VINCENT FUSILIER, SR. ("Reverend Fusilier") is a Black registered voter and a resident of Terrebonne Parish, Louisiana. Reverend Fusilier moved to Terrebonne as

¹ Plaintiffs' counsel, the NAACP Legal Defense and Educational Fund, Inc., has been a separate entity from the NAACP, and the NAACP's state and local branches, since 1957.

a child and registered to vote in the Parish when he became eligible to do so in the 1970s. As a result of Defendants' at-large method of electing judges for the 32nd Judicial District, in combination with racially polarized voting in the Parish, Reverend Fusilier has never been able to have his preferred candidate of choice elected to that judicial body. Reverend Fusilier resides in an area of Terrebonne that could constitute a single-member district containing a majority-Black voting-age population, which, if established, would remedy the existing Section 2 and constitutional violations alleged herein.

14. LIONEL MYERS ("Mr. Myers") is a Black registered voter and a resident of Terrebonne Parish, Louisiana. Mr. Myers has lived and voted in Terrebonne Parish since the 1970s. Since that time, as a result of Defendants' at-large method of electing judges for the 32nd Judicial District, in combination with racially polarized voting in the Parish, Mr. Myers has never been able to have his preferred candidate of choice elected to that judicial body. Mr. Myers resides in an area of Terrebonne that could constitute a single-member district containing a majority-Black voting-age population, which, if established, would remedy the existing Section 2 and constitutional violations alleged herein.

15. DANIEL TURNER ("Mr. Turner") is a Black registered voter and a resident of Terrebonne Parish, Louisiana. Mr. Turner was born and raised in Terrebonne, where he registered to vote when he became eligible to do so in the 1960s. Since that time, as a result of Defendants' at-large method of electing judges for the 32nd Judicial District, in combination with racially polarized voting in the Parish, Mr. Turner has never been able to have his preferred candidate of choice elected to that judicial body. Mr. Turner resides in an area of Terrebonne that could constitute a single-member district containing a majority Black-voting-age population,

which, if established, would remedy the existing Section 2 and constitutional violations alleged herein.

16. WENDELL DESMOND SHELBY, JR. (“Mr. Shelby”) is a Black registered voter and a resident of Terrebonne Parish, Louisiana. Mr. Shelby was born and raised in Terrebonne, and registered to vote in the Parish in 2011. That same year, Mr. Shelby testified in support of House Bill (“HB”) 582, Reg. Sess. (La. 2011), which, as discussed *infra*, would have created single-member districts—including one in which Black voters would have comprised the majority of the voting-age population—for 32nd Judicial District elections. Mr. Shelby resides in an area of Terrebonne that could constitute a single-member district containing a majority-Black voting-age population, which, if established, would remedy the existing Section 2 and constitutional violations alleged herein.

Defendants

17. Defendant Piyush (“Bobby”) Jindal is the Governor of Louisiana and is being sued in his official capacity. Under the Louisiana Constitution, he is “the chief executive officer of the state,” and must “faithfully support the constitution and laws of the state and of the United States,” as well as ensure that “the laws are faithfully executed.” La. Const. art. IV, §5(A). Like other executive officers of the State, Defendant Jindal is required to uphold the U.S. Constitution, including the Fourteenth and Fifteenth Amendments to it, as part of the execution of his gubernatorial duties and responsibilities. 4 U.S.C. § 101. In his capacity as “chief executive officer of the state,” Defendant Jindal also is empowered to sign legislation into law that would change the electoral method for the 32nd Judicial District. La. Const. art. IV, §5(A). Defendant Jindal’s role in fashioning a remedy to the instant action is similar to and consistent with former governor Buddy Roemer’s appointment of a legislative task-force on judicial

elections to devise a remedy in the *Clark v. Edwards*, Section 2 litigation discussed *infra*. 725 F. Supp. 285 (M.D. La. 1988); *see also* Exec. Order No. BR-89-1, La., Div. of Admin., 59 (Jan. 13, 1989), <http://www.doa.louisiana.gov/osr/reg/1989/February.pdf> (former Governor Roemer's executive order appointing special task force to propose remedy for selection of judges).

18. Defendant James Caldwell is Louisiana's Attorney General and is being sued in his official capacity. As Attorney General, Defendant Caldwell is the "chief legal officer of the state," charged with asserting or protecting the rights or interests of Louisiana. La. Const. art. IV, §8. Like other executive officers of the State, Defendant Caldwell is required to support the U.S. Constitution, including the Fourteenth and Fifteenth Amendments to it, before executing his duties as Attorney General. 4 U.S.C. § 101.

19. Defendant Tom Schedler is the Louisiana Secretary of State and is being sued in his official capacity. As the "chief election officer of the state," Defendant Schedler is responsible for, among other things, preparing and certifying the ballots for all Louisiana elections, including for elections for the 32nd Judicial District; promulgating all election returns, including the returns for elections for the 32nd Judicial District; promulgating and publishing all laws enacted by the legislature, including laws requiring at-large voting, a majority vote, and designated division seats for the 32nd Judicial District; and countersigning and keeping an official registry of all commissions, including commissions to the judges elected for the 32nd Judicial District. La. Const. art. IV, §7; La. Rev. Stat. Ann. § 18:421 (2013). Defendant Schedler is specifically charged with enforcing the at-large method of election, in combination with the majority vote requirement and designation of division seats for the 32nd Judicial District, and will continue to exercise that duty absent redress by this Court.

20. Defendants Jindal, Caldwell, and Schedler are state officials charged with ensuring Terrebonne's compliance with applicable state and federal voting laws, including the Voting Rights Act and the U.S. Constitution.

21. Defendants Jindal, Schedler, and Caldwell, at all times relevant to this action, acted under color of state law. Defendants Jindal, Schedler, and Caldwell are enforcement officials maintaining, executing, and enforcing the 32nd Judicial District's discriminatory at-large electoral method. Defendants Jindal, Schedler, and Caldwell will continue to maintain and enforce the 32nd Judicial District's discriminatory at-large electoral method, including through the next scheduled election for this judicial body in 2014, and thereafter, unless Plaintiffs receive redress by this Court.

Section 2 of the Voting Rights Act

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

23. Section 2 prohibits the use of an electoral scheme—such as the 32nd Judicial District's at-large electoral scheme—that purposefully and/or effectively weakens the voting strength of voters of color and, consequently, denies those voters an opportunity to elect candidates of their choice. 42 U.S.C. § 1973(b). Here, the district at issue is the entirety of Terrebonne Parish.

24. Defendants' current at-large method of electing the members of the 32nd Judicial District violates Section 2 of the Voting Rights Act because, in both its purpose and its effect, it

denies and/or abridges Terrebonne Parish's Black voters an equal opportunity to participate in the political process and to elect representatives of their choice.

Terrebonne Parish's Demographics

25. Terrebonne Parish is a political subdivision of the State of Louisiana.

26. According to the 2010 Census, the total population of Terrebonne Parish is 111,860 people. Of this total population, 76,789 (68.65 percent) are white, not-Hispanic, and 21,046 (18.81 percent) are Black, not-Hispanic.

27. The 2012 Census estimate, derived from American Community Survey data, for Terrebonne's total population is 111,893. Of this total population, 68.73 percent are white, not-Hispanic, and 18.83 percent are Black, not-Hispanic.

28. According to the 2010 Census, Terrebonne's total voting-age population is 82,737 (73.96 percent of the total voting-age population), of whom 59,361 (71.75 percent of the total voting-age population) are white, not-Hispanic, and 14,341 (17.33 percent of the total voting-age population) are Black, not-Hispanic.

29. According to the 2010-2012 American Community Three-Year Estimates, as reported by the Census, 34.4 percent of the African-American population, as compared to 22 percent of the white, not-Hispanic population in Terrebonne Parish, has less than a high school diploma.

30. The 2010-2012 American Community Three-Year Estimates also reflect that African-American citizens of Terrebonne have higher rates of poverty than white, not-Hispanic citizens of the Parish: 38.7 percent of the African-American population in the Parish, as compared to 11.6 percent of the white, not-Hispanic population, have income below the poverty level, which, for an individual under 65 years of age, is on average \$11,664.

31. The 2010-2012 American Community Three-Year Estimates reflect that 12.4 percent of the African-American population in Terrebonne between the ages of 16 and 64 years of age are unemployed, as compared to 6.8 percent of the white, not-Hispanic population.

32nd Judicial District and Its Method of Election

32. The 32nd Judicial District is co-extensive with Terrebonne Parish and is composed of five members who are elected at-large by a majority vote.

33. The Parish also has a Houma City Court judgeship, which is elected at-large and has parish-wide jurisdiction.

34. Each of the five members of the 32nd Judicial District serves one of five division seats (A, B, C, D, and E). A separate election is held for each seat on the 32nd Judicial District, with candidates filing to run for one of these specified division seats and competing only with the other candidates who have filed for that same seat.

35. Notwithstanding that there are designated seats on the 32nd Judicial District, candidates are not required to satisfy a residency requirement to run for one of the divisions. Candidates must only have been domiciled in Terrebonne for one year before the election, and have been admitted to practice law in Louisiana for a minimum of eight (8) years.

36. Candidates for the 32nd Judicial District, whose party affiliation is indicated on the ballot, do not run in primary partisan elections. Instead, they run in the open primary election. Each voter in the Parish has one vote to cast in the election to that seat. A candidate must receive a majority of the votes cast to win the position, and, if no candidate receives a majority of the vote in the primary, the candidates receiving the top two number of votes then compete in a run-off election.

37. The members of the 32nd Judicial District serve six-year terms.

38. Each of the terms of the current sitting members of the 32nd Judicial District, which are not staggered, conclude on December 31, 2014. The sitting judicial members are: Judge George J. Larke (Division A); Chief Judge John R. Walker (Division B); Judge Timothy C. Ellender (Division C); Judge David W. Arceneaux (Division D); and Judge Randall L. Bethancourt (Division E). All hold at-large positions.

39. No Black candidate has *ever* been elected to the 32nd Judicial District under its at-large electoral scheme, even though they have run for a seat on that body.

40. Since 1822, when Terrebonne Parish was created, every judge has been a white person. Thus, in the 191-year judicial history of Terrebonne, not one Black judge has been elected. As a result, potential Black candidates, confronted with the harsh reality that their election is not possible under the current at-large electoral method, in combination with racially polarized voting and the other factors that enhance that discrimination, such as division posts, a majority vote requirement, and an unusually large election district, as discussed *infra*, have been discouraged from running, and, indeed, have largely refrained from running, for a position on the 32nd Judicial District.

41. The Louisiana Constitution authorizes state legislators to modify the number of members on the 32nd Judicial District, La. Const. art. V, § 15(D), as well as to revise the districts used to elect members for the 32nd Judicial District, including by dividing the 32nd Judicial District into single-member districts, La. Const. art. V, § 15(B).

***Thornburg v. Gingles* Preconditions**

42. The Supreme Court, in *Thornburg v. Gingles*, identified three necessary preconditions, to sustain a claim that a challenged voting practice results in 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.” 478 U.S. 30, 50–51 (1986). Plaintiffs, in this case, satisfy all three preconditions.

43. After satisfying these *Gingles* prerequisites, Plaintiffs also must—and can, in the instant action—demonstrate that, under the totality of the circumstances, Black citizens of Terrebonne Parish 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).

44. Terrebonne Parish’s Black population is sufficiently numerous and geographically compact to provide for the creation of a single-member district for electing members of the 32nd Judicial District in which Black voters in at least one district would constitute a majority of both the total population and the voting-age population.

45. Elections in Terrebonne Parish are characterized by pronounced levels of racial polarization, with bloc voting by non-Black/white members of the electorate consistently defeating Black-preferred candidates, in election after election, when given a choice of Black or non-Black candidates.

46. In a 1994 race for the 32nd Judicial District, for example, Anthony P. Lewis, the sole Black candidate who ran against five non-Black/white candidates, received more than 72 percent of the Black vote, but just 1 percent of the white vote. Mr. Lewis ultimately lost the election to a white candidate.

47. A year earlier, in 1993, Mr. Lewis ran for a designated seat (Division C) on the First Circuit, 1st District Court, a twelve-judge court of appeals that has jurisdiction over sixteen parishes, including Terrebonne. Mr. Lewis was the only Black candidate in that contest, running

against one non-Black/white candidate. Despite receiving more than 99 percent of the Black vote from Terrebonne voters, Mr. Lewis only received 10 percent of the white vote from Terrebonne voters. Mr. Lewis ultimately lost the election to the white candidate.

48. Non-Black members of the electorate also have consistently voted as a bloc so as to defeat the Black-preferred candidates for other parish-wide, non-judicial elections.

49. In the October 2011 Terrebonne Parish Assessor election, for example, Clarence Williams, the only Black candidate in the at-large parish-wide contest running against three white candidates, received more than 70 percent of the Black vote, but only 2.5 percent of the white vote. Mr. Williams ultimately lost the election to a white candidate.

50. Additional recent examples of racial polarization in Terrebonne Parish are provided by the 2012 and 2008 Presidential elections.

51. In the 2012 Presidential election, President Barack Obama, a Black incumbent, received near-unanimous support from Black voters (98.9 percent), but less than 13 percent of white voter support in Terrebonne Parish. President Obama ultimately finished second of the votes cast by Terrebonne voters towards the Presidential election to Mitt Romney, a white candidate, who was the Republican nominee.

52. President Obama did not fare much better among Terrebonne's white voters in the 2008 Presidential election, receiving just 13.5 percent of their votes. At the same time, Terrebonne Parish's Black voters, as in 2012, provided near-unanimous support for Mr. Obama, with 98.9 percent of Black voters voting for him. Again, President Obama ultimately finished second in the Terrebonne Parish Presidential election to John McCain, a white candidate, who was the Republican nominee.

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

53. In addition to satisfying the *Gingles* preconditions, the totality of circumstances in this case show that Black citizens of Terrebonne Parish have less opportunity than other members of Terrebonne's electorate to participate in the political process and to elect representatives of their choice. *See* 42 U.S.C. §1973(b).

54. Louisiana's long, intense, and persistent history of *de jure* and *de facto* discrimination against Black voters is well-documented and judicially-recognized. *See, e.g., Clark*, 725 F. Supp. 285 at 295 (taking judicial notice of Louisiana's history of official discrimination with regard to Black voters' ability to participate in the democratic process); *Chisom v. Edwards*, 690 F. Supp. 1524, 1534 (E.D. La. 1988) (same); *Major v. Treen*, 574 F. Supp. 325, 339-41 (E.D. La. 1983) (three-judge court) (Black citizens in Louisiana and its political subdivisions have suffered from a history of official racial discrimination in voting and other areas, including education, employment, and housing).

55. At-large methods of election, like Terrebonne Parish's, have been struck by numerous Louisiana courts because of their discriminatory effect on voters of color. The consent decree in the landmark *Clark v. Roemer*, 777 F. Supp. 445 (M.D. La. 1990), line of cases, for example, established majority-minority subdistricts in nine district courts (*i.e.*, 1st, 4th, 9th, 14th, 15th, 18th, 19th, 24th, and 40th judicial districts), as well as the East Baton Rouge Family Court, and one court of appeal circuit (1st Circuit, 2nd District), and required the Louisiana legislature to create majority-minority subdistricts in other district courts (*i.e.*, 23rd and 27th), and a court of appeal circuit (2nd Circuit, 1st and 3rd Districts).

56. Louisiana's extensive, judicially-recognized history of racially polarized voting continues to the present day. *See, e.g., Westwego Citizens for Better Gov't v. City of Westwego*,

946 F.2d 1109, 1118 (5th Cir. 1991) (“There is no dispute that the results from every election which included a viable [B]lack candidate exhibit racial polarization of Westwego’s electorate.”); *E. Jefferson Coal. for Leadership & Dev. v. Parish of Jefferson*, 691 F. Supp. 991, 1004 (E.D. La. 1988) (“From the elections submitted into evidence, it is difficult to conclude that the voting in Jefferson Parish is *not* racially polarized.”) (emphasis added); *Citizens for a Better Gretna v. City of Gretna, La.*, 834 F.2d 496, 504 (5th Cir. 1987) (recognizing racial bloc voting in Gretna’s aldermanic elections as the most notable factor in the totality of the circumstance analysis conducted by the district court).

57. Elections in Terrebonne, specifically, as discussed *supra*, are characterized by stark patterns of racial polarization.

58. In addition to its use of the dilutive at-large electoral scheme for electing judges for the 32nd Judicial District, in combination with racially polarized voting, Terrebonne employs voting practices that further impair Black electoral success in the 32nd Judicial District, including division posts, a majority vote requirement, and an unusually large election district.

59. Defendants’ use of division posts (e.g., A, B, C, D, and E), as discussed *supra*, exacerbates the discriminatory nature of its at-large election system because it precludes a minority group from single shot or bullet voting. Single shot voting entails members of a group casting only one vote, for the group’s candidate of choice, and not casting any of their remaining votes for any other candidate. This strategy provides the candidate of choice of voters of color a better opportunity, but by no means a certainty, of winning one of the electoral seats.

60. Defendants’ majority vote requirement also enhances the discriminatory nature of its at-large method of electing judges for the 32nd Judicial District by creating head-to-head

contests, undermining the ability of Terrebonne's Black voters, who are a minority of the voting residents, to defeat the white majority voting bloc, in order to elect their preferred candidates.

61. Defendants' majority vote requirement discourages Black people in Terrebonne from participating as candidates because Black-preferred candidates, even with cohesive support from Black voters, cannot win a majority of the total vote in at-large Terrebonne elections, particularly for the 32nd Judicial District, without white crossover voting, which, as discussed *supra*, does not occur in the Parish at any appreciable levels.

62. Black citizens in Terrebonne continue to suffer the effects of official discrimination, including a history of discrimination in voting-related activities. The continued effects of discrimination on Black citizens in Terrebonne include their markedly lower educational attainment and socioeconomic statuses relative to white citizens, as referenced *supra*, which can limit political participation. Under the totality of the circumstances, the adoption and maintenance of at-large voting for the 32nd Judicial District interacts with these social and historical conditions in Terrebonne to undermine the ability of Black citizens of Terrebonne to participate effectively in the political process.

63. Black people in Terrebonne Parish have suffered and continue to suffer discrimination, including current and past neglect by unresponsive elected officials, and bear the effects of that discrimination today. In 2004, for example, sitting Judge Timothy Ellender was suspended after attending his brother-in-law's Halloween party "dressed as a prisoner, wearing an orange prison jumpsuit and handcuffs..., as well as a black afro wig" and black facial makeup. *In re Ellender*, 889 So.2d 225, 227 (La. 2004). Judge Ellender was accompanied by his wife, who was dressed as a police officer, and his brother-in-law, who was dressed as Buckwheat. The state-level Judiciary Commission, which received several written complaints,

including one by Plaintiff Terrebonne Parish NAACP, ultimately determined that Judge Ellender's portrayal of "African-Americans in a racially stereotypical manner . . . perpetuated the notion of African-Americans as both inferior and as criminals," and "called into question . . . his ability to be fair and impartial toward African-Americans who appear before his court as defendants in criminal proceedings." *Id.* at 228-29. In response, the Louisiana Supreme Court suspended Judge Ellender for one year, without pay, for dishonoring his position. *Id.* at 234.

64. Terrebonne voters re-elected Judge Ellender for another six year term in 2008 *after* this suspension.

65. Just a few years after his first suspension, the Louisiana Supreme Court in 2009 suspended Judge Ellender for a second time after the Louisiana Judiciary Commission in September 2008 alleged that Judge Ellender exhibited improper temperament and demeanor, impatience, and discourtesy to a woman appearing before him in a 2007 case alleging domestic abuse. *In re Ellender*, 16 So.3d 351, 354, 360 (La. 2009). Terrebonne voters nevertheless re-elected Judge Ellender for another six year term in 2008.

66. With the opportunity to elect responsive representatives for the 32nd Judicial District, Plaintiffs and other Black residents of Terrebonne Parish will have greater confidence that: (1) issues of importance to the Black community, particularly with regard to the fair administration of justice in the criminal and civil systems, will be fairly addressed; and (2) there will be greater fairness and inclusion on judicial committees and administrative bodies, as well as in mediator, public defender, and other important judiciary roles, which the 32nd Judicial District has appointment authority and/or influence over.

67. Unless enjoined by order of this Court, Defendants will continue to violate Section 2 by conducting future elections at-large for the 32nd Judicial District.

Defendants' Adoption and/or Maintenance of At-Large Voting for the 32nd Judicial District Is Motivated by Discriminatory Purpose

68. Defendants, in violation of Section 2 and the Fourteenth and Fifteenth Amendments, through 42 U.S.C. § 1983, adopted and/or maintained at-large voting to elect judges for the 32nd Judicial District to dilute, minimize, and cancel out the voting strength of Black voters in Terrebonne.

69. The Louisiana Constitution provides that the “legislature by law may establish, divide, or merge judicial districts with approval in a referendum in each district and parish affected.” La. Const. art. V, § 15(B).

70. The Louisiana Constitution also provides that the “legislature may change the number of judges in any judicial district by law enacted by two-thirds of the elected members of *each* house.” La. Const. art. V, § 15(D) (emphasis added).

71. The Louisiana legislature has rejected legislative remedies, such as HB 582, that would have created district voting for the 32nd Judicial District. The State legislature has similarly rejected the State Supreme Court’s recommendation that the judicial body’s size be expanded to create a sixth district, and, relatedly, Plaintiff Terrebonne NAACP’s advocacy that that sixth district be one in which Black voters would have comprised the majority of the voting-age population. In so doing, Black citizens of the 32nd Judicial District’s electoral opportunity has been abridged.

72. In 2011, by a vote of 51-40, the Louisiana House of Representatives defeated HB 582, as referenced *supra*, one of the most significant recent attempts to provide Terrebonne’s Black voters with the opportunity to elect candidates of their choice for the 32nd Judicial District. HB 582 would have contained a Black-majority single-member district for electing judges for the 32nd Judicial District.

73. HB 582's defeat followed more than a decade of advocacy by Plaintiff Terrebonne NAACP, and other Parish citizens, to create an opportunity for meaningful representation by candidates of choice of Black voters in Terrebonne. For example, Plaintiff Terrebonne NAACP, and other citizens, have, at least since 1997, advocated for the state legislature, upon the recommendation of the Louisiana Supreme Court through the Louisiana Judicial Council, to add a seat on the five-member judicial body, with one of the districts containing a majority-Black population.

74. As the research board for the Louisiana Supreme Court, the Judicial Council reviews proposals and makes suggestions concerning the numbers of positions on a judicial body to the Supreme Court, which then makes recommendations to the State legislature. *See* La. Rev. Stat. Ann. § 13:61 (2013) (codifying the long-standing practice of the state legislature relying upon the Supreme Court, through the Judicial Council, of making recommendations as to pending legislation seeking to create new judgeships).

75. Following the State Supreme Court's acknowledgement that the 32nd Judicial District's docket warranted an additional seat, another measure, HB 1399, Reg. Sess. (La. 1997), which provided for an additional judgeship in the 32nd Judicial District, passed the House Judiciary Committee (9-2).

76. HB 1399, however, was not ultimately presented for a final vote.

77. HB 1399 failed around the time that an amendment, supported by former 32nd Judicial District candidate, Anthony Lewis, Esq., and Plaintiff Terrebonne NAACP, was defeated (6-5), proposing that the sixth judgeship be designated as a majority-minority district.

78. Legislation similar to HB 1399 to create an additional sixth-seat on the 32nd Judicial District, such as Senate Bills 166, 1st Extraordinary Sess. (La. 1998), 1052, Reg. Sess. (La.

1999), and 968 Reg. Sess. (La. 2001), also has failed in the legislative process. Each piece of legislation provided an opportunity to designate that the additional sixth seat be elected from a majority-minority district to provide Black voters in Terrebonne an opportunity to elect candidates of their choice and to participate in the democratic process.

79. Plaintiff Terrebonne NAACP, and other Parish citizens, also have unsuccessfully advocated for the creation of an additional seat, in which Black voters comprise the majority of the voting age population, on the Houma City Court. As discussed *supra*, Houma City Court's current sole judgeship is elected at-large and has parish-wide jurisdiction.

80. Defendants' purported rationales for maintaining its at-large method of electing members for the 32nd Judicial District are tenuous and/or pretextual for several reasons. *First*, judges elected from subdistricts in numerous other judicial bodies throughout Louisiana, including the Louisiana Supreme Court, serve the entire district. *Second*, Defendants have maintained its discriminatory method of election even after (a) the legislature approved subdistricts in the surrounding 16th Judicial District (which includes neighboring St. Martin and St. Mary parishes) and the 23rd Judicial District (which includes neighboring Assumption Parish), following Section 2 litigation in the *Clark v. Edwards*, 725 F. Supp. 285 (1988), line of landmark cases, and (b) the Parish Council (former policy jury) and Parish School Board adopted district voting to remedy successful Section 2 litigation in *Terrebonne Improvement Ass'n vs. Terrebonne Parish Sch. Bd.*, No. 76-2191 (E.D. La. 1977). *Third*, the Louisiana Supreme Court previously determined that the 32nd Judicial District's caseload entitled it to the creation of an additional sixth seat – one which Plaintiff Terrebonne NAACP and other citizens have advocated be designated for a majority-minority sub-district – yet legislation to this end (*i.e.*, HB 1399 discussed *supra*) still failed in the legislative process.

81. Defendants' purported rationales cannot overcome the fact that at-large voting for the 32nd Judicial District consistently yields and maintains a racially segregated body. Together, these facts individually and collectively demonstrate the intentionally discriminatory nature of the perpetuation of this electoral scheme.

82. The history and ongoing record of voting discrimination in Terrebonne, including its adoption and/or maintenance of at-large voting in the 32nd Judicial District, makes clear that preclearance review under Section 3(c) of the Voting Rights Act, 42 U.S.C. § 1973a(c), is warranted to protect against future violations of the Voting Rights Act, and the constitutional guarantees of the Fourteenth and Fifteen Amendments.

CLAIMS FOR RELIEF

83. Plaintiffs hereby re-allege and incorporate by reference Paragraphs 1 – 82 above.

84. Under the totality of the circumstances, Terrebonne Parish's at-large method of electing members for the 32nd Judicial District has the purpose and effect of diluting the voting strength of Terrebonne's Black community, resulting in Black voters' being denied an opportunity to participate in the political process and to elect representatives of their choice, in violation of Section 2 of the Voting Rights Act, and the constitutional guarantees of the Fourteenth and Fifteen Amendments.

85. Unless enjoined by order of this Court, Defendants will continue to act in violation of Section 2 of the Voting Rights Act and the constitutional guarantees of the Fourteenth and Fifteen Amendments by administering, implementing, and conducting future elections for the 32nd Judicial District using an at-large method of election.

PRAYER FOR RELIEF

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

(a) Declaring that Defendants' at-large method of electing members for the 32nd Judicial District was adopted and/or maintained with a discriminatory purpose in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, and the Fourteenth and Fifteenth Amendments to the U.S. Constitution;

(b) Declaring that Defendant's at-large method of electing members to the 32nd Judicial District has the result of denying or abridging the right to vote on account of race or color in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, and the Fourteenth and Fifteenth Amendments to the U.S. Constitution;

(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 enforcing, administering, implementing, or conducting any future elections to Terrebonne Parish's 32nd Judicial District under the current at-large method of election;

(d) Setting an immediate and reasonable deadline for the State of Louisiana to enact and adopt a new method of election for the 32nd Judicial District that (1) does not dilute, cancel out or minimize the voting strength of Black voters in Terrebonne, and (2) does not violate the Voting Rights Act, federal or state constitutions, or other applicable laws;

(e) Alternatively, ordering the implementation of an election system for the 32nd Judicial District that complies with Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, and the voting guarantees of the Fourteenth and Fifteenth Amendments to the U.S. Constitution and any other applicable laws;

(f) Issuing an order pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. §

1973a(c), retaining jurisdiction over this action and requiring Terrebonne to obtain preclearance, for a necessary and appropriate period of time, from this Court or the U.S. Department of Justice for any and all future changes in voting law impacting the 32nd Judicial District, upon determination that Terrebonne has shown that the proposed changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color in compliance with Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, and the Fourteenth and Fifteenth Amendments to the U.S. Constitution;

(g) Issuing an order requiring Defendants to pay Plaintiffs' costs, expenses, and reasonable attorneys' fees incurred in the prosecution of this action, as authorized by the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C. §§ 1973 & 1988; and

(h) Ordering any such additional relief as the interests of justice may require.

Dated: February 3, 2014

Respectfully submitted,

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*MOTION FOR ADMISSION PRO HAC VICE
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