UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

KENNETH HALL	**:**	**CIVIL ACTION NO. 3:12-CV-0657**
	:	
VERSUS	**:**	**CHIEF JUDGE BRIAN A. JACKSON**
	:	
STATE OF LOUISIANA, ET AL.	**:**	**MAGISTRATE JUDGE RICHARD L. BOURGEOIS, JR.**

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW FILED ON BEHALF OF THE STATE OF LOUISIANA, THE GOVERNOR, AND THE ATTORNEY GENERAL

MAY IT PLEASE THE COURT

NOW INTO COURT, through undersigned counsel, come the Defendants, the State of Louisiana, Bobby Jindal, Governor of the State of Louisiana, who was sued in his individual and official capacity, and James D. "Buddy" Caldwell, Attorney General of the State of Louisiana who was sued in his individual and official capacity, (hereinafter collectively "the Defendants") who provide Proposed Findings of Fact and Conclusions of Law.

The Plaintiff and Intervenor (hereinafter "the Plaintiffs") filed Complaints seek a ruling and judgment declaring that the 1993 Judicial Election Plan violates the following: the First Amendment; Section 2 and Section 5 of the Voting Rights Act; the Fourteenth Amendment – Due Process Clause, Privileges and Immunities Clause, and Equal Protection Clauses; the Fifteenth Amendment; and 42 U.S.C. § 1983. Additionally, the Plaintiffs claim that the State should be subject to 3(c) bail-in under the Voting Rights Act.

The Defendants deny each and every claim for the reasons set forth below.

THE STATE OF LOUISIANA

1. The powers of government of the State of Louisiana are divided into three separate branches: legislative, executive, and judicial. La. Const. art. II, § 1.

2. Except as otherwise provided by the Constitution of the State of Louisiana, no one of the branches of government, nor any person holding office in one of them, shall exercise power belonging to either of the others. La. Const. art. II, § 2.

3. The legislative power of the State of Louisiana is vested in the legislature, consisting of a Senate and a House of Representatives. La. Const. art. III, § 1.

4. The creation and/or assignment of voting districts is within the authority of the legislative branch of the State of Louisiana. La. Const. art. III, § 1; La. R.S. 13:1952.

THE ATTORNEY GENERAL

5. No act or omission by the Attorney General can alter the City's Plan of Government.

6. The Attorney General is a member of the executive branch of the Louisiana State Government. See La. Const. art. IV, § 1.

7. The powers and the duties of the Attorney General are set forth in La. Const. art. IV, §8.

8. The Attorney General does not have the power to legislate, which is a power vested in the legislature by the constitution. See La. Const. art. III, § 1; La. Const. art. IV, § 8.

9. The creation and/or assignment of voting districts is not within the authority of the Attorney General of the State of Louisiana. La. Const. art. III, § 1; La. R.S. 13:1952.

10. The Attorney General has no authority to conduct elections for Baton Rouge City Court.

11. The Plaintiffs are required to notify the Attorney General of a constitutional challenge, but the Attorney General does not need to be made a defendant to the litigation. See La.Code Civ.P. art. 1880; La. R.S. 13:4448; 28 U.S.C. § 2403(b).

12. As a matter of law, the Attorney General has no role in the continued or future implementation of the current Judicial Election Plan for the Baton Rouge City Court.

13. The relief requested by the Plaintiffs exceeds the authority of the Attorney General.

14. The Attorney General cannot remedy the Plaintiffs' claims.

15. Enjoining the Attorney General would not redress the harm alleged in the Plaintiffs' complaint.

16. The Attorney General does not have the authority to enact, maintain, or administer voting qualifications or prerequisites to voting, or election standards or procedures.

THE GOVERNOR

17. The Governor is a member of the executive branch of Louisiana State Government. La. Const. art. IV, § 1.

18. The powers and the duties of the Governor are set forth in La. Const. art. IV, § 5.

19. The Governor does not have the power to legislate, which is a power vested in the legislature by the constitution. La. Const. art. III, § 1; See also La. Const. art. IV, § 5.

20. The creation and/or assignment of voting districts is not within the authority of the Governor of the State of Louisiana. La. Const. art. III, § 1; La. R.S. 13:1952.

21. The relief requested by the Plaintiff and Intervenor exceeds the authority of the Governor.

22. Governor Jindal has not vetoed any legislation relative to the creation and/or assignment of voting districts by the Baton Rouge City Court.

23. Despite the Plaintiffs' allegations to the contrary, the Governor took no position on who should be the next Louisiana Supreme Court Justice. *See Chisom v. Jindal*, 2012 WL 3891594 (E.D. La. 9/1/2012). The only pleading submitted by the State of Louisiana through the Governor simply stated that the decision should be made by Louisiana state courts not a federal court. Proffered Defendants' Exhibit 209B.

24. Enjoining the Governor would not redress the harm alleged in the Plaintiffs' complaint.

25. The Governor does not have the authority to enact, maintain, or administer voting qualifications or prerequisites to voting, or election standards or procedures.

THE JUDICIARY

26. There is no law in Louisiana that requires redistricting of the judiciary after every census.

27. City courts are not created by the Louisiana constitution. The district court (not a city court) is the court of general original jurisdiction. La. Const. art. 5, § 16.

28. Non-discriminatory methods that states use to elect and apportion their state court judges are considered as legitimate factors to be evaluated by courts when examining allegations of racial discrimination in electing state court judges, as in this case. Defendants' Exhibit 3, Bates number 926.

29. Judicial administration and overall caseload are examples of nondiscriminatory methods that states use to apportion state court judgeships. Trial Vol. V at p. 220.

30. La. R.S. 13:61 provides for the creation of a new judgeship, and it mandates that the Judicial Council of the Supreme Court adopt standards and guidelines which shall be applied to determine the necessity of creating any new judgeship and splitting or merging any courts of appeal, district courts, city courts, parish courts, juvenile courts, family courts, traffic courts, and municipal courts. The standards, guidelines or factors to be considered by the Judicial Council include but are not limited to caseload and population. *See* La. R.S. 13:61(E).

31. Before a bill is acted upon by the legislature to create a new judgeship or split or merge courts, a designee of the Judicial Council is mandated to provide information to the appropriate standing committees of the legislature as to approval of the council as to the necessity of creating the new judgeship or splitting or merging the courts. *See* La. R.S. 13:61(B).

32. The legislature shall not be required to act upon or enact legislation creating a new judgeship or office of commissioner, magistrate, or hearing officer even though the council has authorized the creation of the new office. La. R.S. 13:61(C).

33. The City Court of Baton Rouge, which is divided into five divisions, is court established by special legislative act in concert with the Plan of Government. La. R.S. 13:1952(4).

34. The Judicial Council has promulgated guidelines and criteria for new judgeships found in General Guidelines for New Judgeships. As part of the general guidelines the Judicial Council reviews filings, information from all affected entities and any other information. The specific guidelines for new judgeships in city courts are found in Part. D. Request for the Creation of New City and Parish court Judgeships. As evaluation criteria must include documentation that the Judges are engaged in "judicial activities" 209 workdays per year; that the workload that by application of efficient docket management cannot be handled without undue delay; that the work points for filings are sufficient; and that the local governing authority, the sheriff, and the clerk of court will provide courtroom space and support personnel to the new judge.

35. The Judicial Council has also promulgated guidelines and criteria for splitting or merging courts found in Guidelines Relating to the Combination and Splitting of Judicial Districts or Other District Courts. The evaluation criteria to be considered must include the general effects of the proposal on the efficiency and effectiveness of the administration of justice; the fiscal effects of the proposal on either reducing or increasing the costs of judicial compensation and retirement in the affected jurisdictions, the operational costs of the clerks of court in the affected jurisdictions, and the operational costs of the affected courts in both the short or long term; and the general types of impacts on other local stakeholders, including affected local governments, clerks of court, district attorneys, indigent defender boards, probation offices, the Office of Community Services, law enforcement offices, sheriffs, forensic laboratories, victim assistance programs, and other entities, and the potential fiscal impact on the state.

36. The Judicial Council Minutes reflect that Judge Trudy White requested that the Judicial Council defer consideration of an additional judgeship for the Baton Rouge City Court. Vol. 1 at p. 264; See Defendants' Exhibit 181.

37. Following receipt of the 2010 census data, the Louisiana Legislature passed a concurrent resolution requesting that the Supreme Court study all courts in Louisiana. Joint Exhibit 22; Joint Exhibit 5.

38. The Supreme Court has requested additional time for the study. See Vol. IV at p. 229.

39. In 2013, Representative Alfred Williams proposed legislation that would have provided for 3 judges to be elected from Election Section 1 of Baton Rouge City Court and 2 judges to be elected from Election Section 1 of Baton Rouge City Court. Joint Exhibit 13.

40. Legislators expressed concern over piecemeal redistricting of the Courts, and requested that the legislature refrain from acting until receipt of the study from the Louisiana Supreme Court. Joint Exhibit 4.6.

41. Representative Alfred Williams proposed the same legislation that he proposed in 2013 in 2014. Joint Exhibit 15. There was a problem with the precincts listed in his bill. It was discovered that it contained precincts in areas outside of the City of Baton Rouge. Trial Vol. VI at p. 128.

42. Representative Erich Ponti proposed a bill in 2014 that would not have created an additional judgment but would have changed the method of electing judges in the City of Baton Rouge to at-large. Joint Exhibit 14. The Plaintiffs' attorney opposed the bill. Plaintiffs' Exhibit 14. Representative Ponti's bill passed unanimously by the House. Joint Exhibit 3.2 It was amended to a 2-2-1 on the Senate side. Joint Exhibit 14; Joint Exhibit 1; Joint Exhibit 2.

43. African American legislators opposed Representative Ponti's bill on the Senate Floor. Joint Exhibit 2. Senator Gallot made a motion to return the bill to the Calendar so that the Senate did not have to vote on the bill, and the motion passed. Senator Dorsey Colomb indicated that the redistricting of the City Court would be presented during the 2015 session. Joint Exhibit 2.

44. The legislature will defer to local people to bring a solution to local problems. See Vol. VI at p. 10.

THE METHOD OF ELECTING BATON ROUGE CITY COURT JUDGES

45. The at-large method of electing judges for the City Court for the City of Baton Rouge (hereafter the "Baton Rouge City Court") was never determined to be in violation of Section 2 of the Voting Rights Act, 42 U.S.C. section 1973, or the Fourteenth or Fifteenth Amendment of the United States Constitution. The at-large method for electing judges for the Baton Rouge City Court was not at issue in *Clark v. Edwards*, and the Consent

Decree which was entered into as a result of the decision in *Clark v. Edwards* did not include the Baton Rouge City Court.

46. Prior to the enactment of Act 609 of 1993, elections for judges of the Baton Rouge City Court were conducted in an at-large, citywide, by divisions, run-off system in accordance with State law and the Plan of Government. (Rec. Doc. 359, p.34, paragraph 189).

47. Three African-Americans, Judges Freddie Pitcher, Curtis Calloway and Ralph Tyson, were elected to the Baton Rouge City Court at-large from the City of Baton Rouge.

48. Judge Freddie Pitcher was elected to Division B and served on the Baton Rouge City Court from 1983-1988. Plaintiff's Exhibit 23, p.1.

49. Judge Curtis Calloway was elected to Division E of the Baton Rouge City Court in 1988, defeating white candidate "Tim" Screen. (Rec. Doc. 359, p. 35, paragraph 196).

50. The late Judge Ralph Tyson was elected to Division B of the Baton Rouge City Court in 1988, defeating white candidate "Jerry" Arbour. (Rec. Doc. 359, p. 35, paragraph 196).

51. At the time Judge Pitcher was elected to the Baton Rouge City Court in 1983, the City of Baton Rouge was majority white in population.

52. At the time Judges Calloway and Tyson were elected to the Baton Rouge City Court in 1988, the City of Baton Rouge was majority white in population. Transcript, Vol. I, p. 218.

53. Michael Ponder was the Parish Attorney for the City of Baton Rouge and the Parish of East Baton Rouge from January 1, 1993 through September 6, 2005. Transcript, Vol.VI, pp. 5, 8.

54. In 1993, Michael Ponder was approached by a member of the Metropolitan Council for the City of Baton Rouge and the Parish of East Baton Rouge (hereafter "Metropolitan Council") to put the issue of subdividing the City Court into districts on the agenda for the Metropolitan Council. Transcript, Vol. 6, p. 6.

55. In 1993, Michael Ponder sought an opinion from the Louisiana Attorney General regarding the authority of the Metropolitan Council to change the method of electing City Court Judges from at-large, city-wide elections to elections from sub-districts. Transcript, Vol. 6, p. 6.

56. On April 21, 1993, the Office of the Attorney General for the State of Louisiana issued LA Atty. Gen. Op. No. 93-314 to Michael Ponder. In LA Atty. Gen. Op. No. 93-314, the Attorney General concluded in order for the Metropolitan Council to change the at-large method of electing Baton Rouge City Court judges, an amendment to the Plan of Government for the Parish of East Baton Rouge and the City of Baton Rouge (hereafter the "Plan of Government") would be required. The Attorney General also concluded that

Louisiana Legislature was authorized to change the method of electing Baton Rouge City Court Judges. Defendants' Exhibit 187.

57. Upon receipt of LA Atty. Gen. Op. No. 93-314, Michael Ponder informed the Metropolitan Council that an amendment to the Plan of Government would be required in order for the Metropolitan Council to change the method of electing judges to the Baton Rouge City Court. Transcript, Vol. 6, p.7

58. During his tenure as Parish Attorney, nothing was ever put on the agenda for the Metropolitan Council to amend the Plan of Government to change the method of electing judges to the Baton Rouge City Court (Transcript, Vol. 6, p.7), and he was never asked to put redistricting or a change to the election sections for the Baton Rouge City Court on the Metropolitan Council agenda (Transcript, Vol. 6, p.8).

59. By virtue of Act 609 of 1993, the Louisiana Legislature amended the provisions of Louisiana Revised Statutes 13:1952(4) to provide for the creation of Election Sections One and Two for the election of judges to the Baton Rouge City Court. Act 609 also designated that 2 judges shall be elected from Election Section One and 3 judges shall be elected from Election Section Two.

DEMOGRAPHICS OF THE CITY OF BATON ROUGE

60. According to the 1990 Census, the total population of the City of Baton Rouge was 43.89 percent black, and the voting age population was 39.12 percent black. Plaintiffs' Exhibit 62, Bates No. Hall 00907.

61. According to the 2000 Census, the total population of the City of Baton Rouge was 50.02 percent black, and the voting age population was 44.93 percent black. Plaintiffs' Exhibit 62, Bates No. Hall 00907.

62. According to the 2010 Census, the total population of the City of Baton Rouge was 54.58 percent black, and the voting age population was 49.98 percent black. Plaintiffs' Exhibit 62, Bates No. Hall 00907.

63. Section 2 has 37,924 more registered voters than Section 1. Defendants' Exhibit 1.2 at p. 32.

ELEVENTH AMENDMENT IMMUNITY

64. The Defendants re-urge their previously filed arguments that the court lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1).

65. The State of Louisiana, Governor and Attorney General are entitled to Eleventh Amendment Immunity which "bars suits in federal court by citizens of a state against their own state or a state agency or department." *Delahoussaye v. City of New Iberia*, 937 F.2d 144, 146 (5th Cir. 1997) (citing *Voisin's Oyster House, Inc. v. Guidry*, 799 F.2d

183, 185-186 (5th Cir. 1986); *See also Pennhurst State School & Hospital v. Halderman,* 465 U.S. 89 (1984).

66. The law is clear that state officials may invoke Eleventh Amendment immunity when they are sued in their official capacities. *Edelman v. Jordan*, 415 U.S. 651, 663 (1974).

67. The State has not waived its sovereign immunity for suits brought in Federal Court. *See Citrano v. Allen Correctional Center,* 891 F.Supp. 312 (W.D.La. 1995); *Building Engineering Services Co., Inc. v. State of La.,* 459 F.Supp. 180 (E.D.La. 1978).

68. Any allegations regarding past alleged indiscretions do not fall within the *Ex Parte Young* exception to Eleventh Amendment immunity and must be dismissed.

69. The *Ex Parte Young* doctrine requires that the plaintiff 1) seek prospective relief; 2) show each of the defendants have some connection with the enforcement of the Act; and 3) show that each of the defendants threaten to or commence proceedings to enforce the unconstitutional Act.

70. The United States Fifth Circuit Court of Appeals specifically analyzed this factor and found that the general duties of the Louisiana Governor and the Attorney General do not meet the *Ex Parte Young* exception, that each of the defendants has "some connection with enforcement" factor. *Okapalobi v. Foster*, 244 F.3d 405 (5th Cir. 2001).

> It is <u>not merely the general duty to see that the laws of the state are implemented that substantiates the required "connection</u>," but the particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty. For a duty found in the general laws to constitute a sufficient connection, it must include[ ] the right *and the power* to enforce the statutes of the state, including, of course, the act in question ... Thus, any probe into the existence of a *Young* exception should gauge (1) the ability of the official to enforce the statute at issue under his statutory or constitutional powers, and (2) the demonstrated willingness of the official to enforce the statute.

Okpalobi, 244 F.3d at 416-17(internal citation omitted)(emphasis added).

71. Neither the Governor nor the Attorney General is the proper party defendant for the prospective relief sought by the Plaintiff. Neither has the connection required to pierce the Eleventh Amendment immunity based on *Ex Parte Young* been established.

72. With regard to the third factor required to pierce Eleventh Amendment immunity based on *Ex Parte Young*, neither the Governor nor the Attorney General has threatened to or commenced proceedings to enforce the plan at issue.

73. Neither the Governor nor the Attorney General plays a role in the elections of Baton Rouge City Court Judges.

QUALIFIED IMMUNITY

74. To the extent that the Plaintiff, Kenneth Hall, attempts to assert a claim against the Defendants in their individual capacities (Rec. Doc. ¶ 9), the Governor and the Attorney General are entitled to qualified immunity.

FIRST AMENDMENT CLAIM

75. The Plaintiffs have abandoned their First Amendment claims. (Rec. Doc. 315 at p. 30).

SECTION 5 OF THE VOTING RIGHTS ACT CLAIM

76. The Plaintiffs' Section 5 Claim is dismissed. (See Rec. Doc. 315 at p. 30).

ONE PERSON, ONE VOTE PRINCIPLE OF EQUAL PROTECTION CLAIM

77. This Court dismissed Plaintiffs' claims on the basis of the one-person, one vote principle of the Equal Protection Clause of the Fourteenth Amendment. (See Rec. Doc. 214 at p. 13).

PRIVILEGES AND IMMUNITY CLAUSE OF THE FOURTEENTH AMENDMENT CLAIM

78. This Court dismissed Plaintiffs' claim under the Privileges and Immunities Clause of the Fourteenth Amendment. (Rec. Doc. 214).

SECTION 2 OF THE VOTING RIGHTS ACT CLAIM

79. The Plaintiffs allege a Section 2 Claim against all Defendants. Section 2 of the Voting Rights Act forbids state and local voting procedures that result in a denial or abridgement of the right of any citizen of the United States to vote on account of race. 42 U.S.C. §1973(a).

80. A § 2 violation is shown if, based on the totality of circumstances, members of a racial group "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id*. § 1973(b).

81. To establish a § 2 violation on a vote-dilution theory, courts apply the two-part framework set forth in the case of *Thornburg v. Gingles*, 478 U.S. 30, 106, S.Ct. 2752, (1986).

> First, plaintiffs must satisfy, as a threshold mater, three preconditions. Specifically, the minority group must demonstrate that: (1) it is sufficiently large and geographically compact to constitute a majority in a[n additional] single-member district; (2) it is politically cohesive; and (3) the white majority votes sufficiently as a bloc to enable it – in the absence

> of special circumstances – usually to defeat the minority's preferred candidates. Failure to establish all three of these elements defeats a § 2 claim. Second. If the preconditions are proved, plaintiffs must then prove that based on the totality of the circumstances, they have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

See also Fairley, et al. v. Hattiesburg, Mississippi, 584 F.3d 660 (5th Cir. 2009) (citing *Sensley v. Albritton*, 385 F. 3d 591, 595 (5th Cir. 2004).

82. If the three *Gingles* preconditions were met, the Plaintiffs must satisfy the totality-of-circumstances test. The Supreme Court has pointed to a number of factors derived from the VRA's legislative history as essential for weighing the totality of circumstances:

1. The history of voting-related discrimination in the State of political subdivision;
2. The extent to which voting in the elections of the State or political subdivision is racially polarized
3. The extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group;
4. The extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
5. The use of overt or subtle racial appeals in political campaigns;
6. The extent to which members of the minority group have been elected to public office in the jurisdiction;
7. Evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group;
8. Evidence that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous;
9. Whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area.

See Fairley v. Hattisburg, Mississippi, *et al*., 584 F.3d 660; *LULAC V. Perry*, 548 U.S. 399, 126 S.Ct. 2594 (2006); Gingles, 478 U.S. at 44-45.

83. The Supreme Court in Gingles ruled that the two most important factors for courts to analyze in evaluating the "totality of the circumstances" are the extent to which the candidates of choice of minority voters have been elected in the jurisdiction at issue and the presence of racially polarized voting. *Thornburg v. Gingles,* 478 U.S. at 48 n. 15, *Westwego Citizens for Better Government v. City of Westwego,* 946 F.2d 1109, 1120 (5th Cir. 1991), *and Magnolia Bar Association Inc., et al v. Lee,* 793 F. Supp.1386, 1401 (S.D. Miss., 1992).

84. Concerning the two most important totality of the circumstances factors, the Supreme Court opined that:

> [U]nless minority group members experience substantial difficulty electing representatives of their choice, they cannot prove that a challenged electoral mechanism impairs their ability 'to elect' [candidates of their choice] [Voting Rights Act] §2(b).

Thornburg v. Gingles, 478 U.S. at 48, n. 15.

85. The *Gingles* Supreme Court held that an inquiry into the "totality of the circumstances" requires "a searching practical evaluation of the past and present reality" and a "functional view of the political process. " *Thornburg v. Gingles*, 478 U.S. at 45 and *Westwego*, 946 F.2d at 1120.

86. In evaluating the "totality of the circumstances," courts should not become "bogged down" in "mechanical point counting" but rather must make a "searching evaluation" of each jurisdiction's "past and present reality." There is no requirement that any particular number of the factors be proved or that a majority of the factors point one way or another. *Magnolia Bar Association, Inc., v. Lee*, 994 F.2d 1143, 1147 (5th Cir. 1993).

87. Section 2 of The Voting Rights Act requires only "the potential to elect," not a guarantee of electoral victory or a guarantee to any minority group that its preferred candidate must win to avoid violating federal law. *Magnolia Bar Association*, 793 F. Supp. 1386, 1421 Note 14 (S.D. Miss. 1992). "[Section 2] does not require a showing of proportional representation at the liability phase, nor does it require proportional representation as a remedy." Id.

88. The Fifth Circuit has held that district courts must meet exacting standards in their Section 2 vote dilution decisions. As the Fifth Circuit has held, "Because resolution of a voting dilution claim requires close analysis of unusually complex factual patterns, and because the decision of such a case has the potential for serious interference with state functions, . . . district courts [must] explain with particularity their reasoning and the subsidiary factual conclusions underlying their reasoning." *Westwego,* 872 F.2d at 1203.

89. The Fifth Circuit has further held that the district court has the clear responsibility to "specifically state the evidence found credible and the reasons for its conclusions," and to "discuss all 'substantial' evidence contrary to its decision." *LULAC #4552*, 123 F.3d at 846. "[T]his Court has instructed trial courts "to thoroughly discuss the statistics offered by making specific references to the evidence." *Id.* at 847.

90. The Fifth Circuit has vacated and remanded various District Court Section 2 decisions, holding that the trial courts had not sufficiently explained "with particularity" their reasoning and had not discussed all "substantial evidence contrary to its decision," even though plaintiffs in these cases had presented the trial courts with data and analysis from more elections than in the case at bar. *Houston v. Lafayette County, Mississippi, 56 F. 3d 606 (1995) (14 elections) and Teague v. Attala County, Mississippi,* (5th Cir. 1994) (8 elections).

91. To decide a Voting Rights Act §2(b) claim, trial courts are presented with analysis of and information about various elections, as in the case at bar. These analyses focus upon endogenous and exogenous elections. The most probative endogenous and exogenous elections are those where a minority candidate runs against a white candidate. *Magnolia Bar Association, Inc., v. Lee,* 994 F.2d 1143, 1149 (5th Cir. 1993).

92. Endogenous analysis examines the results of elections held within a district to determine how often minority-preferred candidates succeed. *Texas v. United States*, 887 F.Supp.2d 133, 141-142 (D.D.C., 2012).

93. Exogenous election analysis examines how minority-preferred candidates fared in a particular district in statewide, [county or parish wide], or national elections. . . . Outcomes are determined by inputs, of course, and whether the analysis shows an ability to elect turns on variations in the sample set such as the number of elections chosen, the length of time they span, whether the sample is weighted toward more recent contests, and the offices at stake." *Texas v. United States*, 887 F.Supp.2d 133, 143 (D.D.C., 2012).

94. Endogenous elections have significant probative value for the Court to evaluate the existence of the *Gingles* preconditions as well as the Court's overall "searching analysis" in assessing the "totality of the circumstances." However, when the endogenous elections are limited and the overall statistical evidence is "sparse," courts should look to exogenous election results and analysis. *Citizens for a Better Gretna v. City of Gretna, Louisiana*, 834 F.2d 809 (5th Cir. 1987) (endogenous elections in 1977 and 1979, exogenous elections in 1979 and 1984).

95. The plaintiffs bear the burden of proof in a VRA case, and any lack of record evidence on VRA violations is attributed to them, not the district court. *League of United Latin American Citizens #4552 (LULAC) v. Roscoe Independent School District*, 123 F.3d 843 at 846 (5th Cir. 1997).

96. Failure to prove any one of these elements defeats a Section 2 claim. *Sensley v. Albritton*, 385 F.3d 591, 595 (5th Cir. 2004).

97. To prove the first *Gingles* precondition, the Plaintiffs were required to show the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice. *Id*. For that reason, to establish the first *Gingles* precondition, plaintiffs typically have been required to propose hypothetical redistricting schemes and present them to the district court in the form of illustrative plans. *Fairley, et al. v. Hattiesburg, Mississippi*, 584 F.3d 660 (5th Cir. 2009) (citing *Sensley v. Albritton*, 385 F. 3d 591, 595 (5th Cir. 2004).

98. The Plaintiffs do not meet the First Prong of *Gingles*. The Plaintiffs retained Nancy Jensen to propose a hypothetical redistricting scheme. Plaintiffs' Exhibit 62, Nancy Jensen's report. Her report, testimony, and proposed redistricting plan are all fatally flawed.

99. Jensen lists the redistricting principles she followed in drafting her proposed redistricting plan for Baton Rouge City Court. See Plaintiffs' Exhibit 62, Hall 00905. She lists five principles, including "Have at least 65% African-American population and a 58% registered voter population (these are the guidelines suggested by the Department of Justice, prior to the latest Supreme Court ruling on Section 5 [*Shelby County v. Holder*, 133 S. Ct. 2612 (2013), 811 F. Supp. 2d 424 (D.D.C., 2011), aff'd 679 F. 3d 848 (D.C. Cir., 2012)]."

100. From her report, it is unclear what Jensen means by "guidelines suggested by the Department of Justice." Presumptively, she is referring to the Department of Justice's [DOJ] "Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act," which DOJ published since at least 1990 to coincide with the decennial census. DOJ published its latest Redistricting Guidance [Guidance] in 2011. See: Federal Register, Volume 76, Number 27, and February 9, 2011.

101. It is well-settled law that an agency's interpretation of its own regulation is "controlling" unless plainly erroneous or inconsistent with the regulation. *Auer v. Robbins*, 519 U.S. 452, 461 (1997). Jensen's report is dated April 9, 2014, nearly a year after the Supreme Court's Shelby County decision so it is unclear why she is relying upon DOJ Section 5 Guidance that had been superseded by the Court's decision when she wrote her report. See Plaintiffs' Exhibit 62, Hall 00906.

102. *Shelby County* notwithstanding, Jensen should have prepared a redistricting plan as follows to comply with Section 5. Under the Section 5 standard, a redistricting plan is retrogressive if its net effect would be to reduce minority voters' ''effective exercise of the electoral franchise'' when compared to the benchmark plan. *Beer v. United States*, 425 U.S. 125, 141 (1976). There is no retrogression so long as the number of ability-to-elect districts does not decrease from the benchmark to the proposed plan. *Texas v. United States*, 887 F. Supp. 2d 133, 157 (D.D.C. 2012).

103. Pursuant to Section 5, Jensen should have used the existing benchmark city court plan, where African Americans elect two candidates of choice among five City Court judges, and developed a plan to not retrogress, or reduce, African-Americans' ability to elect these two judicial candidates of choice. She did not do so. Instead, she used arbitrary population figures, failed to use state redistricting criteria, and developed a plan where race predominated among her redistricting principles, which is discussed below. See Plaintiffs' Exhibit 62, Nancy Jensen's Report.

104. In her report, Jensen refers to "65% African-American population and a 58% registered voter population" as being part of DOJ's Guidance. See Plaintiffs' Exhibit 62, Nancy Jensen's Report, Hall 00905. However, DOJ's Guidance contains no such population percentage recommendations and indeed cautions against the use of "fixed" numerical calculations in redistricting. See: "The Attorney General does not rely on any predetermined or fixed demographic percentages at any point in the assessment [of Section 5 retrogression]." Guidance Concerning Redistricting Under Section 5 of the

Voting Rights Act**, Federal Register** / Vol. 76, No. 27 / Wednesday, February 9, 2011, page 7471.

105. Instead, DOJ specifically recommends the use of **functional analysis** in redistricting.

> [I]n the Department's view, this determination requires a functional analysis of the electoral behavior within the particular jurisdiction or election district. As noted above, census data alone may not provide sufficient indicia of electoral behavior to make the requisite determination. Circumstances, such as differing rates of electoral participation within discrete portions of a population, may impact on the ability of voters to elect candidates of choice, even if the overall demographic data show no significant change.

Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act**, Federal Register** / Vol. 76, No. 27 / Wednesday, February 9, 2011, page 7471.

106. Jensen's report contains no such functional analysis.

107. In her report, Jensen lists five redistricting principles that she followed in drafting her proposed plan. See Plaintiffs' Exhibit 62, Hall 00905. However, she does not indicate whether her listed principles correspond to the State of Louisiana's traditional redistricting criteria, either for all redistricting or specifically for judicial redistricting.

108. Concerning judicial redistricting, Jensen says nothing about examining court case loads or other judicial administration criteria in preparing her proposed plan. Such criteria are routinely considered as part of any judicial redistricting. Indeed, considerations of judicial administration allow jurisdictions to draw judicial districts that may be less compact and contiguous than, for example, parish council districts, because of court specific case load and judicial economy requirements.

109. In her testimony, Jensen agreed that "the only criteria that [she] were using [in her proposed district plan] … was the racial composition of the precincts." Trial Vol. II, p. 152, Paragraphs 17-21, Trial Transcript, 8/5/14. Jensen's report also does not discuss the percentage of African-American VAP needed to elect candidates of choice in any of her proposed districts or in any other election configuration. Instead, she chooses seemingly arbitrary numbers (65% African-American population and a 58% registered voter population) as a drafting principle for her proposed districting plan. Additionally, she did not propose the creation of single member districts (Trial Vol II, p. 153, Paragraphs 17-21) or an at-large system for the election of City Court judges.

110. In her report and testimony, Jensen fails to recognize the difference between creating districts for parish council, city council, school board, and the state legislature and creating judicial districts. See Plaintiffs' Exhibit 62. Indeed, in her report, she compares her District 2-1 plan with districts for the above jurisdictions. See Plaintiffs' Exhibit 62, Hall 00909. Such an analogy is largely irrelevant. Courts have routinely

disfavored districts in judicial redistricting. See: *LULAC Council No. 4434 v. Clements*, 999 F. 2d 831 (5th Cir. 1993) and *Cousin v. Sundquist*, 145 F.3d 818, 822 (6th Cir. 1998).

111. It is also well-settled that judicial elections are different than elections for virtually any other office. *Martin v. Mabus*, 700 F. Supp. 327, 332 (S.D. Miss., 1988), *Wells v. Edward*, 347 F. Supp. 443 (M.D. La., 1972), aff'd 409 U.S. 1095 (1973) and *Voter Information Project Inc., v. City of Baton Rouge*, 612 F.2d 208, 211 (5th Cir. 1980).

112. This difference is enshrined by the well-settled maxim that judicial elections are not subject to the U.S. Constitution's one person, one vote districting requirement. See e.g.: *Kirk v. Carpeneti,* 623 F. 3d 889, 898 (9th Cir. 2010).

In addition:

> Even more than these concerns about perception…, we are troubled by the political theory represented in the plaintiffs' claim…: that the absence of black judges…automatically indicates a dilution of blacks' right to vote and calls for a remedy….

Cousin v. Sundquist, 145 F.3d 818

113. The most problematic aspect of Jensen's proposed city court plan is her use of race to remedy plaintiffs' allegation that the new majority African-American population must be able to elect an additional candidate of choice. Courts have routinely rejected the notion that the Voting Rights Act and U.S. Constitution require a guarantee of minority electoral success or a 1 for 1 match between minority population and elected officials who are the candidates of choice of minority voters. See e.g.: *Growe v. Emison,* 507 U.S. 25 (1993).

114. The Supreme Court's *Thornburg v. Gingles* (478 U.S. 30, 1986) decision does not mandate any such electoral guarantees.

115. Jensen's report, proposed plan, and testimony indicate that she used race as the only criterion in creating her proposed plan. Trial Vol. II, p. 152, Paragraphs 17-21, Trial Transcript, 8/5/14. It is axiomatic that the use of race as the "predominate factor" in redistricting is unconstitutional, *Miller v. Johnson*, 515 U.S. 900, 916 (1995).

116. When proposed redistricting plans are challenged on racial grounds, courts must review each challenged district to determine whether race predominated over legitimate districting considerations. *Bush v. Vera,* 517 U.S. 952, 963 (1996). And see: *Miller* at 917, *Shaw v. Hunt*, 517 U.S. 899, 904-907 (1996) and *Hunt v. Cromartie*, 526 U.S. 541, 547 (1999). Such a review here must find that Jensen's use of race in her proposed City Court plan predominated over legitimate districting considerations.

117. Nancy Jensen submitted no other plan, nor did the Plaintiff's other witnesses indicate any alternative redistricting plan.

118. In fact, there was an at-large redistricting plan proposed during the Regular Session of the 2014 Legislative Session, House Bill 1151 that the Plaintiffs' attorney opposed. See Plaintiffs' Exhibit 14.

119. The Plaintiffs failed to present evidence constituting a redistricting plan that would have shown either the factual or legal possibility of creating a third majority-minority district.

120. In this case, the Plaintiffs produced limited statistical evidence about the jurisdiction's election patterns.

121. Where plaintiffs produce limited statistical evidence about a jurisdiction's election patterns and results and minority voters have been able to elect their candidates of choice in that same jurisdiction, courts have found that plaintiffs have failed to satisfy the third *Gingles* precondition - the white majority votes sufficiently as a bloc to enable it – in the absence of special circumstances – usually to defeat the minority's preferred candidates. "Given the degree of minority success in this case and the failure of LULAC to produce sufficient evidence showing that Anglo and Mexican-American voters in RISD vote along strict racial lines, we are not left with the definite and firm conviction that the district court made a mistake in finding that LULAC failed to meet the third *Gingles* precondition. Because "'the district court's account of the evidence is plausible in light of the record viewed in its entirety,' its findings will not be reversed." *Magnolia Bar Ass'n*, 994 F.2d at 1147 (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 573, 105 S.Ct. 1504, 1511, 84 L.Ed.2d 518 (1985)). *LULAC #4552* 123 F.3d at 848."

122. In evaluating election analysis and results, courts must inquire into the "circumstances" of each election to determine whether any "underlying unfavorable election results" presented may result from non-discriminatory causes.

123. The scope of the Voting Rights Act is indeed quite broad, but its rigorous protections, as the text of § 2 suggests, extend only to defeats experienced by voters "on account of race or color." Without an inquiry into the circumstances underlying unfavorable election returns, courts lack the tools to discern results that are in any sense "discriminatory," and any distinction between deprivation and mere losses at the polls becomes untenable. In holding that the failure of minority-preferred candidates to receive support from a majority of whites on a regular basis, without more, sufficed to prove legally significant racial bloc voting, the district court loosed § 2 from its racial tether and fused illegal vote dilution and political defeat. In so doing, the district court ignored controlling authorities: Whitcomb v. Chavis, 403 U.S. 124, 91 S.Ct. 1858, 29 L.Ed.2d 363 (1971), which established a clean divide between actionable vote dilution and "political defeat at the polls"; the 1982 amendments, enacted to restore a remedy in cases "where a combination of public activity and private discrimination have joined to make it virtually impossible for minorities to play a meaningful role in the electoral process," Hearings on the Voting Rights Act Before the Subcomm. on the Constitution of the Senate Comm. of the Judiciary, 97th Cong., 2d Sess. 1367-68 (statement of Prof. Drew Days) (emphasis added); and Thornburg v.

> Gingles, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986), where a majority of the Justices rejected the very test employed by the district court as a standard crafted to shield political minorities from the vicissitudes of "interest-group politics rather than a rule hedging against racial discrimination." Id. at 83, 106S.Ct. at 2782 (White, J., concurring); id. at 101, 106 S.Ct. at 2792 (O'Connor, J., joined by Burger, C.J., Powell and Rehnquist, JJ., concurring). We must correct these errors.

League of United Latin American Citizens #4434 (LULAC) v. Clements, 999 F.2d 831, 850-851 (5th Cir. 1993).

124. Neither the Supreme Court nor Fifth Circuit has held that a specific number of elections is per se required to prove a Voting Rights Act §2(b) claim. However, the *Gingles* Court gave specific guidance about the number of elections needed to prove illegal vote dilution, expecting courts consider and analyze elections "over a period of time."

125. Because loss of political power through vote dilution is distinct from the mere inability to win a particular election, a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences legally significant polarization than are the results of a single election. Blacksher & Menefee 61; Note, Geometry and Geography 200, n. 66 ('Racial polarization should be seen as an attribute not of a single election, but rather of a polity viewed over time. The concern is necessarily temporal and the analysis historical because the evil to be avoided is the subordination of minority groups in American politics, not the defeat of individuals in particular electoral contests').

Thornburg v. Gingles, 478 U.S. at 57

126. The *Gingles* Court's record contained analysis of 53 elections. *Thornburg v. Gingles*, 478 U.S. at 53. The District Court and Supreme Court analyzed election results from three election cycles over five years – 1987, 1980, and 1982. *Id*. at 80-81. "We conclude that the District Court's approach, which tested data derived from three election years in each district, and which revealed that blacks strongly supported black candidates, while, to the black candidates' usual detriment, whites rarely did, satisfactorily addresses each facet of the proper legal standard." *Thornburg v. Gingles*, 478 U.S. at 61.

127. By contrast, Plaintiffs in the case at bar provided evidence from two election dates that are 32 days apart in one election year, November 6, 2012 and December 8, 2012. See Plaintiffs' Exhibit 59, Hall 00861-00874; Plaintiffs' Exhibit 60, Hall 00875-00878. Defendants have found no case where a court reviewed Voting Rights Act §2(b) allegations that were based on election dates approximately one month apart in one election cycle in the same year.

128. In cases where courts have found Voting Rights Act Section 2 violations, these courts have all had the benefit of evaluating election results over a longer time period

than in the case at bar. The breadth of election results is especially important where African Americans have a demonstrated record of being able to elect their candidates of choice, in contrast with situations where minority voters have little or no success electing their preferred candidates. See: *Citizens for a Better Gretna* and *Houston v. Lafayette County, Mississippi*, 56 F. 3d 606, 608 (5th Cir 1995), where "No black resident has ever been elected to the office of county supervisor." *Campos v. City of Baytown, Texas*, 840 F.2d 1240, (5th Cir. 1988), endogenous and exogenous elections analyzed from 1979, 1984, and 1986. "There have been eight different elections for the Baytown City Council where minority members were candidates, and the minority candidate has never won." *Id* at 1249.

129. In a more recent case involving the same experts as in the case at bar, Dr. Engstrom and Dr. Weber, the court found no Section 2 violation in a city's at-large election system. *U.S. v. Alamosa County, Colorado*, 306 F. Supp. 2d 1016 (D. Colo, 2004). In that case, Dr. Engstrom analyzed three decades worth of endogenous and exogenous elections, 1982, 1984, 1986, 1990, 1992, 1994, 1998, 2000, and 2002. Dr. Engstrom concluded that 21 of the 22 elections he analyzed were polarized by ethnicity. *Id.* at 1023. Being able to analyze and evaluate a range of elections, over more than one year, satisfies the *Gingles* Supreme Court's concern that "a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences legally significant polarization than are the results of a single election." *Thornburg v. Gingles*, 478 U.S. at 57.

130. Plaintiffs cite to *Magnolia Bar Association* for the proposition that this Court can find a Section 2 violation in the case at bar based on two Baton Rouge City Court and two state appeals court elections held over 32 days in 2012 since the *Magnolia Bar Association* used only two elections to hold that Section 2 had not been violated.

131. However, Plaintiffs omit critical information in their citation to this case. The district and appeals courts rejected Plaintiffs' claim that Mississippi's method for electing Supreme Court judges violated Section 2.

132. Both courts relied upon two judicial elections, one each in 1986 and 1991, in which African-American judicial incumbents won their elections. *Magnolia Bar Association*, 994 F. 2d at 1149. The Fifth Circuit further noted the breadth of elections analyzed and admitted into evidence through plaintiffs' expert, by contrast with the sparse election record in the case at bar. "Dr. Lichtman analyzed three different kinds of election contests pitting black candidates against white candidates … (including Circuit, Chancery, and Supreme Court elections); elections in the Second Congressional District; and numerous city and county elections. His analysis covered approximately a twenty-year period and included a wide range of local, state, and federal offices." *Id* at 1151, fn 3.

133. Coincidentally, the 1991 election of Justice Banks has a striking similarity to the December 8, 2012 election involving Judge Guidry in the case at bar. The *Magnolia Bar Association* trial court and the Fifth Circuit held that Justice Banks' election, together with Justice Anderson's election, to prove that Mississippi's Supreme Court Justice election system did not violate Section 2. Justice Banks won election with approximately

30 percent of the white vote, combined with nearly unanimous black support. *Magnolia Bar Association,* 994 F. 2d at 1406. In the case at bar, Judge Guidry attained virtually the same results in the City of Baton Rouge City Court Section 2, where plaintiffs fail to prove whites vote as a bloc to usually defeat the preferred candidates of African Americans. Vol. V, at pp. 75; See Defendants' Exhibit 1.2 at pp. 25-26. Judge Guidry's election results cast similar doubt on plaintiffs' Section 2 allegations in the case at bar.

134. Plaintiffs' analyzed elections, all of which occurred only 32 days apart in 2012, all present the "circumstances underlying unfavorable election returns" that the Fifth Circuit counsels trial courts to examine when evaluating Section 2 vote dilution allegations. In her report, Angele Romig recounted the results from all judicial elections in Louisiana from 1993-2014. Vol. V, at pp. 18-19, 21; Defendant's Exhibit 1.2, 1.4. Ms. Romig reported that from 1993-2014, 1,782 judicial incumbents, ran for election. Defendant's Exhibit 1.2 at p. 8; Trial Vol. V at p. 48. Of these 1,782 candidates, 1,702, or 95.5 percent, won re-election. Defendant's Exhibit 1.2 at p. 8. Seventy-seven percent of judicial incumbent candidates won re-election without opposition, 16.1 percent of judicial incumbents won in contested elections or finished in the top-two in a primary election and then proceeded to runoff elections (2.4 percent of incumbent candidates). Defendant's Exhibit 1.2. Ms. Romig also reported City Court election results from the City of Baton Rouge during the same time period, from October 16, 1993 through April 15, 2014. Defendant's Exhibit 1.2. During this time period, there were ten unique election dates, encompassing primaries, general elections, and general election runoffs. A total of 53 judicial candidates ran for office in these elections. Defendant's Exhibit 1.2, at p. 9; Trial Vol. V. at pp. 48-49. In analyzing and reviewing the City Court election results, Ms. Romig reported that no City Court incumbent judge lost re-election. Defendant's Exhibit 1.2, at p. 10.

135. Courts have recognized that incumbency may be a "special circumstance" to explain minority voters' success in electing candidates of choice. *Magnolia Bar Association*, 994 F.2d at 1149. The same logic can be applied to the success of any incumbent candidate, regardless of race. Indeed, as the Court conducts the *Gingles*-required "searching analysis," incumbency is one of the "circumstances" to evaluate to determine the causes of "underlying unfavorable election returns." Such incumbent success is especially important to evaluate in the case at bar, where the admitted evidence reveals significant incumbent success, by black and white judges and black candidates for many elected offices. Defendants' Exhibit 1.2.

136. In the 2012 Supreme Court primary election on November 6, 2012, African-American candidate Judge John Michael Guidry ran against seven white candidates. There was no incumbent in this election. The 5th Supreme Court District encompasses all or part of six parishes, including East Baton Rouge Parish and the Baton Rouge City Court precincts. Defendants' Exhibit 1.2 at p. 25. In November 2012 election returns only from East Baton Rouge Parish, Judge Guidry received more than three times the votes of his nearest competitors, all of whom are white, receiving 64,084 votes. Defendants' Exhibit 1.2 at p. 25.

137. Election results from Baton Rouge City Court Section 2, not including partial precincts, reveal that Judge Guidry received 14,476 votes or thirty-three percent, more than 3 times the support of his nearest competitors, all of whom are white. Defendants' Exhibit 1.2 at p. 26. Judge Guidry forced a general election runoff on December 8, 2012 against Jeff Hughes, a white candidate who was also a judge. Again, Judge Guidry prevailed in East Baton Rouge Parish, in Baton Rouge City Court Section 1 (95 percent v. 5 percent for Hughes) and in City Court Section 2 (54 percent v. 46 percent for Hughes). Judge Guidry received approximately 30 percent of City Court Section 2's white vote. Defendants' Exhibit 1.2 at pp. 25-26.

138. Although Hughes won the runoff and was elected to the Louisiana Supreme Court, Judge Guidry defeated Hughes in the City of Baton Rouge, where white voters did not vote as a bloc to prevent his election. Judge Guidry won East Baton Rouge Parish by nearly 6,000 votes with 54.9 percent of the votes. Defendants' Exhibit 1.2 at p. 26. Judge Guidry's percentage of the vote in East Baton Rouge Parish was remarkably similar to his winning vote totals in Iberville Parish (55.59%) and Pointe Coupée Parish (54%) while exceeding those in West Feliciana Parish (50.58%), and East Feliciana Parish (50.08%). Defendants' Exhibit 1.2 at p. 26.

139. As stated previously, the Guidry/Hughes election results mirror those for Judge Banks for the Mississippi Supreme Court in 1991 in *Magnolia Bar Association*. In both elections, two black judicial candidates won overwhelming support from African-American voters and approximately thirty percent support from white voters. The *Magnolia Bar Association* trial court and the Fifth Circuit held that Justice Banks' election, together with Justice Anderson's election, proved that the existing court election system did not violate Section 2 of The Voting Rights Act. A similar conclusion should be reached regarding Judge Guidry's election results. Judge Guidry would today be Justice Guidry if it were not for the voters in Livingston Parish (Judge Hughes' home parish) to defeat him, by approximately a 12:1 margin, and prevent African-American voters from electing their candidate of choice. Defendants' Exhibit 1.2 at p. 26.

140. Plaintiffs cannot use the purported white bloc voting that occurred in Livingston Parish, which is not a party to the case at bar, to claim Judge Guidry's election proves their vote dilution claim. Indeed, the facts of Judge Guidry's election represent the type of "searching analysis" and "circumstances underlying unfavorable election returns" that courts must evaluate when ruling upon Section 2 vote dilution claims.

141. On November 6, 2012, Baton Rouge voters chose a candidate for the First Circuit Court of Appeal District 2, Subdistrict 1, Division B. Baton Rouge voters could choose from two African-American candidates (Gideon T. Carter III and Trudy M. White) and one white candidate ("Mike" McDonald). Defendants' Exhibit 1.2 at p. 28.

142. The jurisdictional lines of the Court of Appeal district do not align with the Baton Rouge City Court, according to Ms. Romig' s report. Indeed, four precincts and one split precinct from City Court Section 2 are not included in the Court of Appeal district. Defendants' Exhibit 1.2 at p. 27. African-American voters in four of these five precincts

heavily supported African-American candidate of choice Tiffany Foxworth, who forced a runoff in her 2012 City Court Section 2 election. Trial V at p. 112; Defendants' Exhibit 2, Bates number 288. Precinct 1-7 was the only one of these five precincts that Foxworth did not win in 2012, losing it narrowly to Judge Ponder on November 6, 2012, 200-182. Trial V at p. 112; Defendants' Exhibit 2, Bates number 288.

143. Plaintiffs allege that City Court Section 2's white voters bloc vote to prevent the election of African-American candidates. In addition, the Court of Appeal district does not include most of City Court Section 1, with an African-American majority. The absence of the four high performing for African-American candidates City Court Section 2 precincts and most of the City Court Section 1 precincts are ideal examples of "circumstances underlying unfavorable election returns" that courts must evaluate when ruling upon Section 2 vote dilution claims as well as the results of the required "searching analysis." See Defendants' Exhibit 3.

144. On November 6, 2012, Joel G. Porter, an African-American candidate, challenged incumbent Judge Alex Wall for Division 2C Baton Rouge City Court Judge. Judge Wall won re-election with 60.55 percent of the vote. African-American voters preferred Mr. Porter, who received approximately 60 percent of the Section's African-American vote and 12.1 percent of the City Court Section 2's white vote. Consistent with past judicial election results in Louisiana and other Baton Rouge City Court elections, Baton Rouge City Court Judge Wall was re-elected.

145. Concerning the Porter/Wall contest, there were additional factors in this election that the Court must assess in its "searching analysis" as being "circumstances underlying unfavorable election returns."

146. In 2006, the Louisiana Supreme Court suspended Joel Porter from the practice of law for one year. Trial Vol. V at pp. 229, 252; Defendants' Exhibit 209-A. In the Louisiana Supreme Court's Decree that suspended Candidate Porter, the Court wrote:

> In acting as he did, respondent violated the Rules of Professional Conduct as alleged in the formal charges. He violated duties owed to his clients, the legal system, and the profession. He acted knowingly, causing actual harm to his clients and potential harm to the legal system. The baseline sanction is a period of suspension.
>
> The aggravating factors present are multiple offenses and vulnerability of the victims. In mitigation, we recognize that respondent has no prior disciplinary record and was relatively inexperienced in the practice of law at the time of the misconduct at issue here. He has also expressed remorse for his conduct and has pledged to avoid similar problems in the future.
>
> Under these circumstances, we conclude the appropriate sanction for respondent's misconduct is a one-year suspension from the practice of law.

DECREE

> Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Joel Gerard Porter, Louisiana Bar Roll number 21825, be suspended from the practice of law for one year. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

See Defendants' Exhibit 209-A.

147. In addition, on October 29, 2012, on the eve of the Division 2C City Court election, the Louisiana Judicial Campaign Oversight Committee, responding to a complaint the Commission had received, wrote that it believed that a campaign flyer distributed by Candidate Porter violated Canon 7A(2) of the Code of Judicial Conduct by endorsing "another candidate for public office," President Obama. Candidate Porter did not deny that his campaign produced the flyer, which he distributed. See Defendants' Exhibit 209-A; See Vol. V, pp. 228-230; See Vol. V, p. 98

148. Defendants produced uncontradicted expert testimony (See Defendants' Exhibits 2 and 3) that these ethical considerations influenced the outcome of Porter's judicial election, where issues of trust and ethics can be more significant than in elections for other offices, especially when such issues concern a candidate challenging a judicial incumbent, as Candidate Porter did in November 2012. Indeed, Mr. Porter's support from African-American voters was more than 30 percent less than the African-American support for Tiffany Foxworth in the same 2012 election. See Defendants' Exhibit 209-A; See Vol. V, pp. 228-230; See Vol. V, pp. 98

149. Again, the Porter election provides significant evidence of the "circumstances underlying unfavorable election returns" to reveal potential non-discriminatory causes of the election result that courts must evaluate when ruling upon Section 2 vote dilution claims as well as while conducting the required "searching analysis."

150. The "circumstances underlying unfavorable election returns" and a "functional view of the political process" concerning the 2012 elections reveal the insufficiency of plaintiffs' proof. Such insufficiency is especially true in the case at bar, in a jurisdiction like Baton Rouge, where African-American candidates have enjoyed significant success.

151. Such success is further revealed by plaintiffs' witnesses, some of whom are or were African-American elected officials, such as Judge Guidry and several legislators. Such electoral success also clearly demonstrates why courts must be able to examine election results "over a period of time" to be able to evaluate allegations of disenfranchisement and illegal vote dilution. Plaintiffs have simply not met their high burden through plaintiffs' use of election results from two 2012 election dates separated

by 32 days to prove that the existing City Court election system discriminates against African-American voters. Plaintiffs did not prove *Gingles* precondition three, the white majority votes sufficiently as a bloc to enable it – in the absence of special circumstances – usually to defeat the minority's preferred candidates.

152. The Mayor President's race of 2004, shows that Kip Holden defeated Bobby Simpson in Election Section 2 by a 51-49 percent margin. Defendants' Exhibit 1.2, pp. 14-16. Clearly, Mr. Holden had to have convinced or persuaded a large number of non-African American voters to vote for him as these voters held a 40,000 vote advantage over African American voters in the district in 2004. Defendants' Exhibit 1.2, pp. 14-16.

153. In 2008, as an incumbent, Mayor Holden received 73% of the vote in Section 2 against two non-African American candidates. Defendants' Exhibit 1.2 at p. 17.

154. An African American candidate demonstrated that incumbency, experience, an advantage in time, and money translated to a larger victory. Exhibit 1.2 at p. 17; See also Exhibit 2, Bates number 287.

155. In 2012, Mayor Holden ran against Mike Walker, a better financed and better organized opponent than the one that ran against Mayor Holden in 2008. Mayor Holden received over 64% of the vote in Election Section 2. Defendants' Exhibit 2, Bates number 287; See also Defendant's Exhibit 1.2 at pp. 14-16.

156. In 2012, President Obama led Mitt Romney by 54% to 44% margin in Election Section 2, again demonstrating that race is not the sole determining factor in a voter's mind when choosing whom to vote for in an election. Defendants' Exhibit 2, Bates number 288.

157. President Obama, Mayor Kip Holden, Constable Reginald Brown, Judge Curtis Calloway, Judge John Michel Guidry, Judge Freddie Pitcher, and others have demonstrated that at least in East Baton Rouge Parish, and specifically in Election Section 2 of the Baton Rouge City Court, the more important factors in predicting who will win an election are the time tested campaigning elements of experience, money, political party and which candidate has a resource advantage. Exhibit 2, Bates number 288.

158. The circumstances underlying unfavorable election returns and a functional view of the political process concerning the 2012 elections reveal the insufficiency of the Plaintiffs' proof. Such insufficiency is especially true in the case at bar, in a jurisdiction like Baton Rouge, where African American candidates have enjoyed significant success. Such electoral success also clearly demonstrates why courts must be able to examine election results "over a period of time" to be able to evaluate allegations of disenfranchisement and illegal vote dilution. Plaintiffs have simply not met their high burden of proof through Plaintiffs' use of election results from two 2012 election dates separated by 32 days to prove that the existing City Court election system discriminates against African American voters. Plaintiffs certainly did not prove *Gingles* precondition

three, i.e. the white majority votes sufficiently as a bloc to enable it – in the absence of special circumstances – usually to defeat the minority's preferred candidates.

159. In the alternative, even if the three Gingles preconditions were met, the Defendants maintain that the Plaintiffs have not satisfied the totality-of-circumstances test.

160. The Supreme Court has pointed to a number of factors derived from the VRA's legislative history as essential for weighing the totality of circumstances:

- *The history of voting-related discrimination in the State or political subdivision;*

This Court agreed that there has never been a finding of a Section 2 violation against the Baton Rouge City Court. Judge Parker in the *Clark v. Roemer*, 777 F. Supp. 445 (M.D. La. 1990), case does not opine in any way about a Section 2 violation as to the Baton Rouge City Court. *Id*. At 453-469.

- *The extent to which voting in the elections of the State or political subdivision is racially polarized;*

The Plaintiffs' expert only analyzed four elections. The Plaintiffs did not present any other evidence as to whether elections in the State of Louisiana are racially polarized. None of the elections analyzed by Dr. Engstrom were statewide elections.

- *The extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group;*

The testimony at trial showed that the current Judicial Election Plan was heavily supported by the NAACP's President, Ernest Johnson, and Judge John Michael Guidry. Both of these witnesses testified that African Americans were in favor of the creation of subdistricts. There was no evidence presented at trial with regard to majority vote requirements, anti-single shot provisions, or other practices or procedures.

- *The extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process*;

The Superintendent of Schools of the East Baton Rouge Parish School System testified that he is not aware of any educational deficiencies, for instance, past discrimination that may have some effect on more contemporary voter issues. Trial Vol. II at p. 256.

- *The use of overt or subtle racial appeals in political campaigns;*

The Intervenor, Byron Shaper, an experienced political candidate, contradicted witness testimony and testified that he worked on the campaigns of Joel Porter and Tiffany

Foxworth and that he did not encounter any racial appeals from candidates in any race he worked in. Trial Vol. I, pp. 109, 114.

- *The extent to which members of the minority group have been elected to public office in the jurisdiction;*

President Obama, Mayor Kip Holden, Constable Reginald Brown, Judge Curtis Calloway, Judge John Michel Guidry, Judge Freddie Pitcher, and others have demonstrated that at least in East Baton Rouge Parish, African Americans can enjoy electoral success. The more important factors in predicting who will win an election are the time tested campaign elements of experience, money, political party and which candidate has a resource advantage. Defendants' Exhibit 2, Bates number 288.

- *Evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group;*

At the first opportunity after receipt of the 2010 census data, the Louisiana Legislature passed a concurrent resolution to study all court's in the State. The study is still ongoing. Legislators have indicated that they will introduce legislation relative to Baton Rouge City Court in 2015. The Plaintiff-Sharper, as a member of the City Council, was in a position to advocate for a modification of City's plan of Government. He did nothing to implement change.

- *Evidence that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous;*

Non-discriminatory methods that states use to elect and apportion their state court judges are considered as legitimate factors to be evaluated by courts when examining allegations of racial discrimination in electing state court judges, as in this case. Defendants' Exhibit 3, Bates number 926.

- *Whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area.*

The percentage of African American Judges currently elected to the Baton Rouge City Court is reasonably close to the voting age population of African – Americans. Trial Vol. V at p. 234.

See Fairley v. Hattisburg, Mississippi, et al., 584 F.3d 660; LULAC V. Perry, 548 U.S. 399, 126 S.Ct. 2594 (2006); Gingles, 478 U.S. at 44-45.

161. The Defendants maintain that there is no violation of Section 2; however, if this Court were to find a violation of Section 2, the Louisiana State Legislature must be given an opportunity to remedy the violation. The authority to redistrict lies with the Louisiana

State Legislature which is not a party to this law suit or by modification of the City's Plan of Government.

162. The Louisiana State Legislature was joined as a Defendant in the Plaintiff's Third Amending and Supplemental Complaint. On September 30, 2013, this Honorable Court dismissed with prejudice claims against the Louisiana House of Representatives, Charles "Chuck" Kleckley in his official capacity as the Speaker of the Louisiana House of Representatives, Walt Leger, in his official capacity as Speaker Pro Tempore of the Louisiana House of Representatives, and the Louisiana Senate by and through John A. Alario, Jr., in his official capacity as President of the Louisiana Senate, and Sharon Weston Broome, in her official capacity as the President Pro Tempore of the Louisiana Senate. (Rec. Doc. 178, p. 19.)

163. Although the Plaintiffs sued the State of Louisiana the powers of the government of the state are divided into three separate branches: legislative, executive, and judicial. *See* La.Const. Art. III § 1 Apportionment is a legislative responsibility which may not be exercised by the other branches of the government. *See* La. Const. Art. III § 2.

164. The fact that the Louisiana State Legislature was found to be immune from liability does not mean that other State actors can exercise the powers of the legislature (this is prohibited by La.Const. art. II, Sect. 2) or that the legislature's power to redistrict can be usurped merely because they asserted legislative immunity in this lawsuit.

165. The Fifth Circuit recognized in *Jones v. Lubbock,* 727 F.2d 364, 387 (5th Cir.1984), *reh'g denied,* 730 F.2d 233 (1984) that:

> Apportionment is principally a legislative responsibility. *E.g., Chapman v. Meier,* 420 U.S. 1, 27, 95 S.Ct. 751, 766, 42 L.Ed.2d 766 (1975). A district court should, accordingly, afford to the government body a reasonable opportunity to produce a constitutionally permissible plan. *Wise v. Lipscomb,* 437 U.S. 535, 540, 98 S.Ct. 2493, 2497, 57 L.Ed.2d 411 (1978). If the governmental body does submit a plan, the court should, before rejecting it, determine that the substitute plan itself is unlawful. *Id.*

See also Rodriguez v. Bexar County, Tex. 385 F.3d 853, 870 (5th Cir. 1984) .

166. Accordingly, if this Honorable Court were to find a violation of Section 2 of the VRA, the law requires that the district court afford the governing body a reasonable opportunity to produce a constitutionally permissible plan.

167. Although Plaintiffs will no doubt argue that the legislature's failure to pass legislation during the pendency of this suit satisfies the Fifth Circuit's requirement, such an interpretation is erroneous. It would be premature and futile for the Louisiana Legislature to submit a plan prior to the court finding that the Plaintiffs met there burden

of proof. Additionally, such an interpretation would lead to the requirement that the legislature submit a plan each time a Section 2 claim is alleged.

DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

168. No documentary or testimonial evidence was presented at trial to prove that the Attorney General, the Governor, or the State of Louisiana denied the Plaintiffs their rights to life, liberty, or property.

169. No documentary or testimonial evidence was presented at trial to prove that the Attorney General, the Governor or the State of Louisiana denied the Plaintiffs any meaningful opportunity to be heard.

170. No documentary or testimonial evidence was presented at trial to prove that the Attorney General, the Governor, or the State of Louisiana denied the Plaintiffs their right to procedural due process.

171. No documentary or testimonial evidence was presented at trial to prove that the Attorney General, the Governor, or the State of Louisiana deprived the Plaintiffs of their rights to substantive due process.

172. No documentary or testimonial evidence was presented at trial to prove that the Attorney General, the Governor, or the State of Louisiana in any way violated the Due Process Clause of the Fourteenth Amendment.

EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

173. The original purpose of the Equal Protection Clause of the Fourteenth Amendment was to prevent states from intentionally discriminating against persons on the basis of race. See *Washington v. Davis*, 426 U.S. 229, 239, 96 S.Ct. 2040 (1976).

174. There is a presumption that the legislators acted in good faith in redistricting. Given the presumption of the legislature's good faith in redistricting, showing that a redistricting plan intentionally discriminates is not ordinarily an easy task.

175. A trial court must perform a sensitive inquiry in such circumstantial and direct evidence as may be available. *Hunt v. Cromartie*, 526 U.S. 546, 119 S.Ct. 1549 (1999); *Arlington Heights v. Metro. Hous. Dev., Corp*., 429 I.S. 252, 266, 97 S.Ct. 555 (1977).

176. "Strict scrutiny does not apply merely because redistricting is performed with consciousness of race . . . . Nor does it apply to all cases of intentional creation of majority-minority districts. *Bush v. Vera*, 517 U.S. 952, 958, 116 S.Ct. 1941 (1996).

177. The Judicial Election Plan, Act 609, is neutral on its face.

178. The Plaintiffs have failed to produce any documentary or testimonial evidence to show intent to discriminate on behalf of the Attorney General, Governor, or State of Louisiana.

179. The Plaintiffs have not proven a violation of the Equal Protection Clause of the Fourteenth Amendment by the Attorney General, Governor, or State of Louisiana.

FIFTEENTH AMENDMENT CLAIM

180. The Fifteenth Amendment provides: "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. U.S. Const. amend XV, Sec. 1; See also Section 2 (a) of the Voting Rights Act.

181. There is no constitutional right to vote for a certain number of judges. Judges need not be elected at all. *Chisom*, 501 U.S. at 400, 111 S.Ct. 2366 (citation omitted), the U.S. Constitution does not guarantee the right to vote some minimum number of judges.

182. Louisiana's constitution does not require City Courts. In Louisiana, the district court (not a city court) is the court of general original jurisdiction. La. Const. art. 5 s 16. The city court has concurrent jurisdiction with district court. It is not a constitutionally created court. It is created by statute pursuant to a grant of authority

183. Vote dilution does not give rise to a cause of action under the Fifteenth Amendment. See *Reno v. Bossier Parish*, 528 U.S. 320, 334 n.3 (2000); *Holder v. Hall*, 512 U.S. 874, 920 (1994) (Thomas, J. concurring in judgment); *Mobile v. Bolden*,446 U.S. 55, 84 n.3 (1980) (Stevens, J. concurring); see also *Tigrett v. Cooper*, No. 10–2724–STA–tmp, 2012 WL 691892, at *10 (W.D.Tenn. Mar. 2, 2012) (summarizing Supreme Court precedent).

184. To prove racial discrimination in violation of the Fifteenth Amendment's right to vote, the Plaintiffs must prove the government acted with discriminatory intent. (Rec. Doc. 277).

185. The Plaintiffs have failed to produce any documentary or testimonial evidence to show intent to discriminate on behalf of the Attorney General, Governor, or State of Louisiana.

186. The Plaintiffs have not proven a violation of the Fifteenth Amendment by the Attorney General, Governor, or State of Louisiana.

42 U.S.C.A. § 1983 CLAIM

187. This Court previously dismissed Plaintiffs' 42 U.S.C.A. § 1983 claim against the State of Louisiana. (Rec. Doc. 214; Rec. Doc. 174.)

188. Plaintiff's 42 U.S.C.A. § 1983 claims against the Governor and the Attorney General are prescribed.[1]

189. Federal courts borrow state statutes of limitations to govern claims brought under section 1983. *Harris v. Hegmann*, 198 F.3d 153 (C.A. 5 (La.), 1999) *referring to Burge v. Parish of St. Tammany,* 996 F.2d 786, 788 (5th Cir.1993) (citing *Hardin v. Straub,* 490 U.S. 536, 538-39, 109 S.Ct. 1998, 104 L.Ed.2d 582 (1989); *Jackson v. Johnson,* 950 F.2d 263, 265 (5th Cir.1992)).

190. Although federal courts look to federal law to determine when a civil rights action accrues, state law supplies the applicable limitations period and tolling provisions. *Id* at 157. See also *Gartrell v. Gaylor*, 981 F.2d at 257.)C.A.5 (Tex.), 1993)

191. Under federal law, a Section 1983 action accrues when a plaintiff knows or has reason to know of the injury which is the basis of the action. *Id*. See also *Jackson v. Johnson,* 950 F.2d 263 at 265 (quoting *Burrell v. Newsome,* 883 F.2d 416, 418 (5th Cir.1989)).

192. Louisiana Civil Code Article 3492 states in pertinent part that, "[d]elictual actions are subject to a liberative prescription of one year. This prescription commences to run from the day injury or damage is sustained."

193. The Fifth Circuit has continually held that Louisiana's one year prescriptive period is applicable to actions under 42 U.S.C.A. § 1983. See *Elzy v. Roberson*, 868 F.2d 793 (C.A. 5 (La.), 1989); *Dixon v. Louisiana Dept. of Corrections*, 294 Fed.Appx. 970 (C.A. 5 (La.), 2008); *Tilmon v. Prator*, 67 Fed.Appx. 253 (C.A. 5 (La.), 2003); *Raz v. Louisiana State University Medical Center Shreveport*, 48 Fed.Appx. 481 (C.A. 5 (La.), 2002); *Laprime v. Foti*, 99 F.3d 1136 (C.A. 5 (La.), 1996); *Ogletree v. Foti*, 1 F.3d 1237 (C.A. 5 (La.), 1993) and *Davis v. Louisiana State University*, 876 F.2d 412 (C.A. 5 (La.), 1989).

194. Under federal law, a cause of action under Section 1983 accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action. *Lavellee v. Listi*, 611 F.2d 1129 (5th Cir. 1980); *Longoria v. City of Bay City*, Texas, 779 F.2d 1136 (5th Cir.1986).

195. The Plaintiff's original action was filed on October 18, 2012 (Rec. Doc. 1) and the Intervenor filed his complaint on May 13, 2013. (Rec. Doc. 128) In the case at bar, the most recent complaints state that,

> The Defendants knew that the city of Baton Rouge became a majority-minority populated city as early as the year 2000. After the September 2005 Hurricanes Katrina and Rita, the Defendants

[1] The Intervenor did not sue the Attorney General or the Governor in their individual capacities. See Rec. Doc. 128 at p. 2.

> became aware that the City of Baton Rouge had become a super-majority African American city.
>
> After the 2010 United States Census, it became specifically obvious that exact population and demographics had drastically changed in Louisiana whereby African American citizens became a supermajority of the City of Baton Rouge's population, voting age population and registered voters.

(Rec. Doc. 180, page 3 of 5, paragraph 8 & 9 and Rec. Doc. 181, page 3 of 6, paragraph 8 & 9.)

196. This is the only specific, non-conclusory allegation made against the remaining Defendants regarding when the parties "knew or had reason to know of the injury which is the basis of the action."

197. The Plaintiff and the Intervenor go as far as to state that "[a]fter the 2010 United States Census, it became specifically obvious that exact population and demographics had drastically changed in Louisiana whereby African American citizens became a supermajority of the City of Baton Rouge's population, voting age population and registered voters."

198. As such, the Plaintiff and the Intervenor's claims under 42 USC § 1983, as alleged in their complaints, are prescribed and must be dismissed as any action which took place before October 18, 2011 is prescribed.

199. Alternatively, if this Honorable Court finds that the claims under 42 U.S.C.A § 1983 are not prescribed, the Plaintiffs have presented no documentary or testimonial evidence at trial to prove that the Attorney General or Governor deprived the Plaintiffs of any right secured by federal law.

200. The Plaintiffs have not demonstrated that the governmental official was motivated by intentional discrimination on the basis of race as required by *Washington v. Davis*, 426 U.S. 229, 238-42 (1976); *Vera v. Tue*, 73 F.3d 604, 609 (5th Cir. 1996).

201. The Plaintiffs have presented no documentary or testimonial evidence at trial to prove that the Attorney General or Governor deprived the Plaintiffs of any rights they claimed to have been deprived of in this action.

SECTION 3 OF THE VOTING RIGHTS ACT

202. Section 3(c) may be used only after a court finds intentional racial discrimination in violation of the "voting guarantees" of the Fourteenth and Fifteenth Amendment.

203. Section 3(c) is a remedial provision, and "does not … provide a basis on which to state a cause of action." *Weber v. White*, 422 F.Supp. 416, 423 (N.D. Tex. 1976).

204. Section 3 (c) does not provide an independent claim but instead merely announces the procedure and remedies available in a proceeding to enforce the guarantees of the Fourteenth and Fifteenth Amendment.

205. The text of section 3(c) makes clear that bail-in may be ordered only in limited circumstances. First, the U.S. Attorney General or an "aggrieved person" must initiate a lawsuit to enforce the "voting guarantees" of the Fourteenth or Fifteenth Amendment. Second, the court must find a violation of the Fourteenth or Fifteenth Amendment. 42 U.S.C. § 1973a(c). Third, the court must determine that the constitutional violation justifies equitable relief. Fourth, the court must grant some relief to the plaintiffs other than bail-in.

206. Once these conditions are satisfied, section 3(c) authorizes the court to retain jurisdiction for a period of time "as it may deem appropriate."

207. In this case, there has been no determination of a Fourteenth or Fifteenth Amendment violation. And no evidence has been produced warranting the finding of a Fourteenth or Fifteenth violation.

208. In the absence of finding a violation, Section 3(c) does not permit bail-in.

209. Further, more than one violation of the Fourteenth or Fifteenth Amendment must be shown in order to impose continuing preclearance requirements over a State or political subdivision under Section 3(c) of the Voting Rights Act. *Jeffers v. Clinton*, 740 F.Supp. 585, 600 (E.D. Ark. 1990).

210. A court's imposition of preclearance requirements through the imposition of Section (c) should be limited in scope and time and tailored in nature, concerning only specific election conditions upon which violations have been found and within the jurisdictions where such violations have been found. *Id*. at 601-602.

211. The Plaintiffs have not proven the requisites for the imposition of a Section 3(c) remedy in this matter concerning the City Court of Baton Rouge or the State of Louisiana.

PROPOSED FINDINGS OF FACT FOR DEFENDANTS' EXPERTS

PROPOSED FINDINGS OF FACT - ANGELE ROMIG

212. Angele Romig is a Vice President for GCR, Inc. Trial Vol. V. at p. 6

213. In her tenure with GCR, Inc., she served as the project manager over a project for the Secretary of State for the creation of the initial Election Registration Information Network (ERIN) assignment. Trial Vol. V at p. 7.

214. ERIN is the Secretary of State's repository of information on all voters and voting-related information such as candidate and elected official history, election results, absentee balloting, judicial management, and voter records. Defendants' Exhibit 1.2.

215. Ms. Romig developed a query to extract data from ERIN on all judicial candidates in the State of Louisiana from October 16, 1993, through April of 2014. See Defendants' Exhibit 1.2, Bates number 800; Trial Vol. V at pp. 18-19. The query allowed her to pull forth information on for the following judicial positions: Associate Judges; City Judge; City Judge, City Court; District Judge; Judge; Judge, Court of Appeal; Judge, Family Court; Judge, Parish Court; Justice of the Peace. See Defendants' Exhibit 1.2; Trial Vol. V at pp. 18-19; 45.

216. From this work, she created a table called "Exhibit A" which is attached to her report and which she then used to analyze and look at counts based on the four dispositions of candidates that are possible, which are as follows: whether they were defeated, elected, matured to a runoff, or were unopposed. Trial Vol. V at p. 19; See also Defendants' Exhibit 1.2; See also Defendants' Exhibit 1.4

217. "Exhibit A" contains the nine elected office judicial positions. Trial Vol. V at p. 45.

218. "Exhibit B–Election dates" to the report quantifies the 89 unique election events, and the outcome of the contests contained in those election events. Trial Vol. V at p. 25; See also Defendants' Exhibit 1.2; Defendants' Exhibit 1.5, bates number 267.

219. "Exhibit C-Election Dates Incumbent" is the report for the 89 election events that contains the outcome for the incumbents identified. Trial Vol. V. at p. 25; See Also Defendants' Exhibit 1.6, Bates number 270.

220. The definition of an incumbent is that you had been previously elected to that specific seat in the prior election. For example, if you were ad hoc and not elected you were not an incumbent. Trial Vol. V at p. 26.

221. "Exhibit D – City Court Dates" to the report contains the 28 contests for the ten election events in City Court in East Baton Rouge Parish, where 53 candidates were identified as running for judge, as well as the disposition of their candidacy. Trial Vol. V at p. 27; See also Defendants' Exhibit 1.7, Bates number 271.

222. "Exhibit E-City Court Incumbents" to the report contains a subset of Exhibit D with just the incumbent candidates being identified, where 19 incumbents were identified as running for judge in these election events for City Court in East Baton Rouge Parish, as well as the disposition of their candidacy. Trial Vol. V. at p. 27; See also Defendants' Exhibit 1.8, Bates number 272.

223. "Exhibit F-City Court Race Incumbents" to the report is a further explanation of the 53 candidates for City Court races that appeared over the ten unique election events.

It delves into the race of the candidates, the outcome based on the further delineation of the candidates' disposition. Trial Vol. V. at p. 29; See also Defendants' Exhibit 1.9, Bates numbers 273-275.

224. "Exhibit G" to the report was prepared to assist with geographic understanding of City Court Section 1 and Section 2. There are three wards in East Baton Rouge Parish, whether the ward and precinct is contained in City Court District 1 is marked by x-1, or City Court District 2 is marked by x-2, or if it is a partial. Trial Vol. V. at p. 29; Defendants' Exhibit 1.10, Bates numbers 276-280.

225. "Exhibit I" to the report is a map that is on the Baton Rouge City Court website that identifies the sections and divisions of city court in East Baton Rouge Parish. Trial Vol. V at p. 30, Defendants' Exhibit 1.11, Bates number 281.

226. "Exhibit J" to the report is a map containing the jurisdiction of East Baton Rouge Parish. Trial Vol. V at p. 31, Defendants' Exhibit 1.12, Bates number 282.

227. The lowest political subdivision that is tracked within ERIN is at the precinct level; therefore, there is a problem from the factual standpoint in using ERIN to determine precincts that are within Section 1 or within Section 2 or perhaps within both sections. Trial Vol. V at p. 33.

228. "Exhibit K" to the report is a map of the East Baton Rouge Parish wards 1 and 3 and all precincts shown. It shows that the vast majority of section 1 does not have the authority to vote in the First Circuit Court of Appeal District 2 election. Trial Vol. V at p. 35; Defendants' Exhibit 1.13; Bates number 283.

229. The following information was identified in the query: 4,653 candidates; 89 unique election dates (including primaries and general elections (runoffs); 2,910 contests. Trial Vol. V at pp. 21, 45; See also Defendants' Exhibit 1.2 at pp. 6-7; Defendants' Exhibit 1.4.

230. 1,769 candidates won without opposition (38.2% of all candidates); 888 candidates were elected by voters (19.2% of all candidates); 506 candidates progressed to a runoff (10.9%) of all candidates); 1,472 candidates were defeated (31.8% of all candidates). Trial Vol. V at pp. 45-46; Defendants' Exhibit 1.2 at p. 6.

231. Of the 4,635 candidates, 1,782 were incumbent candidates who ran in 89 unique election events. Trial Vol. V at p. 46.

232. Of the 1,782 incumbent candidates, 1,372 incumbent candidates won without opposition; 287 of the incumbent candidates progressed to a runoff; 80 incumbent candidates were defeated. In summation 1,659 incumbent candidates either had no opposition or were elected. Trial Vol. V at pp. 46-47; Defendants' Exhibit 1.2 at p. 7. When you factor in the candidates that had no opposition or were elected, the outcome is 1,702 incumbent candidates won without opposition, were elected by the voters, or

finished within the top two fields and preceded to a runoff with a 95% incumbency determination. Trial Vol. V at p. 47; Defendants' Exhibit 1.2 at p. 8.

233. In analyzing the statewide judicial historical data and sample of 1,782 incumbent judicial candidates in Louisiana, 4.5% of all incumbent judicial candidates lost re-election. Trial Vol. V at p. 48; Defendants' Exhibit 1.2 at p. 8.

234. There were 10 unique election dates related to judicial elections in City Court of East Baton Rouge from October 16, 1993 through April 5, 2014. There were a total of 53 candidates running in these elections. 16 candidates won without opposition (30.2% of all candidates); 8 candidates were elected by voters (15.1% of all candidates); 8 candidates progressed to a runoff (15.1% of all candidates); 21 candidates were defeated (39.6% of all candidates). 15 incumbent candidates won without opposition (78.9% of incumbent candidates); 3 incumbent candidates were elected by voters (15.8% of incumbent candidates); 1 incumbent candidate candidates progressed to a runoff (5.3% of incumbent candidates); 0 incumbent candidates were defeated (0% of incumbent candidates); 18 incumbent candidates won without opposition or were elected by voters (94.7% of incumbent candidates); 19 incumbent candidates won without opposition or were elected by voters or finished within the top two of the field and proceeded to a runoff (100.0% of incumbent candidates). Defendants' Exhibit 1.2 at pp. 8- 9; Trial Vol. V at pp.48-49.

235. No incumbent City Court judicial candidate has lost re-election. 100% won their contest or finished within the top two of the field. Defendants' Exhibit 1.2 at p. 10.

236. In the Mayor-President Election for the City of Baton Rouge, September 18, 2004, there were seven candidates in the election, of which two candidates were African American and two candidates were white. Kip Holden (African American) captured the highest vote count in the parish. However because neither candidate achieved 50%, a runoff election was required. Kip Holden received 30% of the vote in Baton Rouge City Court Section 2. Defendants' Exhibit 1.2 at p. 14.

237. In the Mayor-President Election for the City of Baton Rouge, September 2, 2004, Mayor Kip Holden received 53% of the vote in Baton Rouge City Court Section 2. Defendants' Exhibit 1.2 at p. 16.

238. In the Mayor-President Election for the City of Baton Rouge, October 4, 2008, there were four candidates in the election, of which two were African- American and two were white. Mayor Kip Holden (African American) captured the highest vote count in the Parish. Mayor Holden received 73% of the vote in Baton Rouge City Court Section 2. Defendants' Exhibit 1.2 at p. 17.

239. In the U.S. Presidential Election, November 4, 2008, there were two candidates in the election, of which one candidate was African American (now President Barack Obama) and one was white. President Obama received the most votes in East Baton

Rouge Parish. President Obama received 49% of the vote in Baton Rouge City Court Section 2. Defendants' Exhibit 1.2 at p. 19.

240. In the Mayor-President Election for the City of Baton Rouge, November 6, 2012, there were four candidates in the election, of which one was African American (Mayor Holden) and three were white. Mayor Holden received 62% of the vote in Baton Rouge City Court Section 2. Defendants' Exhibit 1.2 at p. 21.

241. In the U.S. Presidential Election, November 6, 2012, there were two candidates in the election, of which one candidate was African American (President Obama), and one candidate was white. President Obama received 52% of the vote in Baton Rouge City Court Section 2. Defendants' Exhibit 1.2 at p. 22.

242. In the Associate Justice, Supreme Court, 5th Supreme Court District (East Baton Rouge only), November 6, 2012, there were eight candidates, of which one candidate was African American (John Michael Guidry) and seven white candidates. Judge Guidry captured the highest vote count at 34%. He garnered 32% of the vote from Baton Rouge City Court Section 2. However, because no candidate received 50% there was a runoff between Judge Guidry and Judge Hughes during the runoff, which took place on December 8, 2012, Judge Guidry received 53% of the vote in Baton Rouge City Court Section 2. Defendants' Exhibit 1.2 at p. 25.

243. Judge Guidry received more votes than Judge Hughes throughout the parish wide and City Court jurisdictions. Defendants' Exhibit 1.2 at p. 26.

244. Judge Guidry received 31,160 votes in East Baton Rouge Parish, as opposed to Jeff Hughes who received 25,583 in East Baton Rouge Parish. Defendants' Exhibit 1.2 at p. 26.

245. In the Court of Appeal, First Circuit, 2nd District race held on November 6, 2012, the geographic jurisdiction does not wholly align with the Baton Rouge City Court. (See Exhibit K). To compare the data of these two different jurisdictions in voting results would require the exclusion of precincts in whole and in part from the Baton Rouge City Court jurisdiction. Defendants' Exhibit 1.2 at p. 27.

246. Election results for the Court of Appeal in City Court Sections 1 and 2 are incomplete for analysis. Defendants' Exhibit 1.2 at p. 27.

247. In the Court of Appeal, First Circuit, 2nd District race held on November 6, 2012, there were three candidates, of which two were African American and one was white. Two of the candidates were Republican and one of the Candidates was White. 69% of the combined vote went to the two Republican candidates. Judge Mike McDonald (an incumbent) received the most votes at 49%. The combined votes for the two African American candidates totaled 51%. Exhibit 1.2 at p. 28.

248. Baton Rouge City Court Section 1 is a lesser populated district by 53,832 persons. Defendants' Exhibit 1.2 at p. 31.

249. Baton Rouge City Court Section 2 has 44,272 more than Section 1 that have reached the voting age population. Defendants' Exhibit 1.2 at p. 31

250. In total population Section 1 is 21% white, 75% African American, and 4 % other races. In voting age population, Section 1 is 25% white, 70% African American and 5% other races. Defendants' Exhibit 1.2 at p. 32.

251. In total population Section 2 is 51% white, 43% African American, and 6% other races. Regarding voting age population, Section 2 is 55% white, 39% African American and 6% other races. Defendants' Exhibit 1.2 at p. 32.

252. Section 2 has 37,924 more registered voters than Section 1. Defendants' Exhibit 1.2 at p. 32.

PROPOSED FINDINGS OF FACT- MICHAEL BEYCHOK

253. Michael Beychok was qualified as an expert in the field of political consulting, including the conduct of campaigns and campaign financing materials and other items included in conducting political campaigns here in the State of Louisiana. Trial Vol. V at p. 80.

254. It is more difficult for judicial candidates to raise money for a judicial election than candidates for other types of elections to raise money. A Supreme Court rule does not allow judicial candidates to ask for money. Trial Vol. V at p. 84-85.

255. Money, time, people and resources are important factors to consider in order to be successful for elections. Trial Vol. V at pp. 85

256. Time is an important factor. The election is a predetermined date, so time is an advantage. Trial Vol. V at p. 85.

257. People are another important resource. What amount of people a campaign is able to recruit as volunteers, to make or do election tasks, to know on doors, to make calls, to raise money to send postcards, are all important. The more people you have, you can make the argument that the less money you will need. Trial Vol. V at p. 86.

258. Strategy, message, how you deliver your message, and how you allocate resources are all factors that affect the likelihood of a candidate being successful. Trial Vol. V at p. 88.

259. How you allocate your time as a candidate is an important factor that contributes to the likelihood of a candidate winning. Trial Vol. V at p. 88.

260. It is not more difficult for African-American candidates to raise money than white candidates. Trial Vol. V at p. 88.

261. It is more difficult for a candidate to raise money if the candidate is running against an incumbent. Trial Vol. V at pp. 92-93. There is power associated with incumbency and fundraising, especially in judicial elections, where most of the money is raised from lawyers. It can make it difficult for a challenger of an incumbent to raise money. Trial Vol. V at p. 93.

262. There are things that a candidate can do to compensate for the lack of funds available for a campaign. Trial Vol. V at pp. 93-94.

263. Judge Brick Wall was an incumbent, and as an incumbent he had an advantage in the election. Trial Vol. V at p. 94; *See also* Exhibit 1.2.

264. Judge Wall practiced law in Baton Rouge for 26 years, and had served as a City Court Judge for approximately 14 years. Defendants' Exhibit 2, Bates Number 285; Trial Vol. V at p. 97.

265. Judge Wall is a (white) Democrat, and his opponent Joel Porter is an (African American) Democrat. Defendants' Exhibit 2, Bates Number 285; See also Exhibit 1.2.

266. Judge Brick Wall filed necessary paperwork for his campaign committee two years prior to the November 2012 election, and he began campaigning two years prior to the November 2012 election. Trial Vol. V at p. 94.

267. Joel Porter did not file a statement of organization with the Board of Ethics. Trial Vol. V at p. 95. Joel Porter could not have been raising money because he had not filed a statement of organization with the State Board of Ethics. Trial Vol. V at p. 96.

268. Based on the campaign finance reports, it appears Mr. Porter began spending money around the time that he qualified to run for office in August of 2012. There was no evidence offered to show that Mr. Porter began campaigning until he qualified on the last day of official qualifications. Trial Vol. V at p. 95; See also Defendants' Exhibit 2, Bates number 285.

269. This late entry meant that Mr. Porter had little time to equalize the overwhelming name recognition gap that existed between himself and the incumbent Judge Wall. Defendants' Exhibit 2, Bates number 285; Trial Vol. V at pp. 97-98.

270. Joel Porter, had been subjected to discipline by the Supreme Court and fined or cited by the Louisiana Board of Ethics for improper campaign finance reporting or violations in a previous campaign. Trial Vol. V at p. 98.

280. The element of time was clearly in Judge Wall's favor. Defendants' Exhibit 2, Bates number 285.

281. Another factor in Judge Wall's favor was his campaign's ability to raise money. Defendants' Exhibit 2, Bates number 285.

282. Judge Wall raised and spent $55,000, and Mr. Porter raised and spent just over $20,000.00. Defendants' Exhibit 2, Bates number 286. Judge Wall raised all of his donations from donors, while Mr. Porter loaned his campaign nearly $13,000.00, and he had few donors. This lack of people support leads to the final resource campaigns have at their disposals – people or volunteers or donors. Defendants' Exhibit 2, Bates number 286.

283. Judge Wall spent money on direct communication with voters through targeted mail pieces. Trial Vol. V at p. 102.

284. Mr. Porter did no reported directed mail or communication with voters through paid means. Defendants' Exhibit 2, Bates number 286.

285. In connection with the November 2012 campaign, Judge Wall and Judge Ponder (the two incumbents) both received the support and endorsement of three influential and respected African Americans in the Baton Rouge community, Representative Alfred Williams, Joe Delpit, and Reverend Leo Cyrus. Trial Vol. V at p. 102-103, 107-110; See also Plaintiffs' Exhibit 131.

286. Judge Wall had a large advantage in money raised and spent the money more wisely than Mr. Porter who spent no reported money on communicating to voters in the district than through paid means. Defendants' Exhibit 2, Bates number 286.

287. Mr. Porter was not disadvantaged by voter registration but by his lack of or his campaign's lack of effort. Defendants' Exhibit 2, Bates number 286.

288. By deciding to run for judge on the last day of qualifying, a candidate like Joel Porter is giving up too much time that cannot be recovered where you need to accomplish certain things in order to win. Trial. Vol. V at p. 104.

289. Judges are the most difficult incumbents to beat and that runs from City Court to Supreme Court Defendants' Exhibit 2, Bates number 286.

290. Voters are more likely to re-elect an incumbent Judge than almost any other elected official. Defendants' Exhibit 2, Bates number 286.

291. In order to beat an incumbent Judge a challenger campaign must fully utilize the resources available to him, and Mr. Porter clearly did not do this in his campaign for judge. Defendants' Exhibit 2, Bates numbers 286-287.

292. The reason that Mr. Porter was not able to defeat Judge Wall in the election that was held in November of 2012 is because of the following reasons: Judge Wall was the

incumbent; in order to overcome the incumbency advantage, the challenger would have needed to raise significant money, and Mr. Porter did not do this; Judge Wall had used the resource of time, by campaigning long before qualifying…there is no evidence that Joel Porter actively campaigned or recruited endorsements or volunteers; Mr. Porter's reputation had been damaged by being disciplined by the Supreme Court, and this information was made known to voters during the campaign. Trial Vol. V at p. 106; Defendants' Exhibit 2, Bates number 286.

293. Judge Wall was able to gain nearly 42% of the African American vote and was able to convert his experience and communicate his credentials to African American voters who chose his background over what was almost certainly an unknown Mr. Porter. Defendants' Exhibit 2, Bates number 287.

294. Judge Suzan Ponder was an incumbent, and as an incumbent she had an advantage in the election. Defendants' Exhibit 2, Bates number 288; Trial Vol., V p. 105.

295. Judge Ponder had been a City Court Judge for nearly 20 years at the time of the 2012 election. Defendants' Exhibit 2, Bates number 288; Trial Vol. V at p. 110.

296. Ms. Foxworth had been practicing law for only a few years. Defendants Exhibit 2.

297. In the November 2012 election, Judge Ponder (who is white) received 44.84 percent of the vote, Tiffany Foxworth received 43.16 percent of the vote and Cliff Ivey (who is white) received 12 percent of the vote. Defendant's Exhibit 2, Bates number 288; See also Exhibit 1.2.

298. Judge Ponder spent roughly $105,000.00, both the primary and runoff. Trial Vol. V at p. 111; Defendants' Exhibit 2, Bates number 288-289. By contrast, Tiffany Foxworth spent less than $10,000.00 for the City Court Judge position. Trial Transcript Vol. V at p. 111. Ms. Foxworth had spent over $50,000.00 in the previous year's election for State Representative. Defendants' Exhibit 2, Bates number 288; Trial Vol. V at p. 112.

299. Judge Ponder sent out 6 mail-outs. Defendants' Exhibit 2, Bates number 288.

300. Ms. Foxworth benefited from having recently run a serious and meaningful campaign for state representative. She had name recognition, a resource of human volunteers, and residual effects from her State Representative election, which allowed her to not only make a runoff but also nearly lead Judge Ponder in the primary. Defendants' Exhibit 2, Bates number 288 -289; Trial Vol. V at pp. 112, 113.

301. Ms. Foxworth had more success running against an incumbent judge than Joel Porter because within the twelve months preceding the November 2012 election, she had spent money; she was known by a large portion of the district; she had used social media and done advertising on Facebook; she had experience running a campaign; and she had a lot of things going for her that Mr. Porter did not. Trial Vol. V at p. 114; Defendants Exhibit 2, Bates number 288-289.

302. The General Election November 2012, had a high African American turnout, in part because of the Presidential election, which helped Ms. Foxworth despite the fact that she was outspent 8-1 by Judge Ponder. Defendants' Exhibit 2, Bates number 289; Trial Vol. V at p. 115.

303. There was significant roll-off in African American turnout for the December 2012 election. Defendants' Exhibit 2, Bates number 289.

304. When there is a lower turnout runoff election, like in December of 2012, it takes resources, meaning dollars and people to get your voters back to the polls. Trial Vol. V at p. 115.

305. In the December run-off, Judge Ponder spent an additional $26,000.00 to Foxworth's $2,000.00. Defendants' Exhibit 2, Bates number 289; Trial Vol. V at p. 115.

306. It is clear that Judge Ponder did spend money to remind voters that there was an election and that they needed to go vote. Trial Vol. V at p. 115.

307. Ms. Foxworth could have won the runoff election had she had more money. Defendants' Exhibit 2, bates number 289; Trial Vol. V at p. 115

308. In all three elections, Mayor Kip Holden received more votes than other candidates in what is known as the City Court Section 2. Trial Vol. V at p. 116; See also Exhibit 1.2.

309. In 2004, Mayor Holden was able to convince people that he was the Agent for change in Baton Rouge. He had run twice before, he had gotten acquainted with people, and because of his leadership style, position on issues, and vision for East Baton Rouge, he was able to get elected. Trial Vol. V at p. 117-118.

310. In 2004, Mayor Holden was successful in winning the election in the Parish as a whole, but statistically he received 73% of the vote in Election Section 2 of the City Court. Trial Vol. V at p. 121; Defendants' Exhibit 2 at p. 287.

311. The factors that contributed to Mayor Holden's ability to get elected are that he demonstrated that he was capable of doing a good job. His performance was very positive. He had been able to raise a significant amount of money as the incumbent. He was able to communicate his results to voters effectively. Trial Vol. V at p. 121.

312. The Mayor President's race of 2004, shows that Kip Holden defeated Bobby Simpson in Election Section 2 by a 51-49 percent margin. Defendants' Exhibit 2, Bates number 287. Clearly, Mr. Holden had to have convinced or persuaded a large number of non-African American voters to vote for him as these voters held a 40,000 vote advantage over African American voters in the district in 2004. Defendants' Exhibit 2, Bates number 287.

313. In 2008, as an incumbent, Mayor Holden received 73% of the vote in Section 2 against two non-African American candidates. Defendants' Exhibit 2, Bates number 287

314. An African American candidate demonstrated that incumbency, experience, an advantage in time, and money translated to a larger victory. Defendants' Exhibit 2, Bates number 287.

315. Before the Baton Rouge City Court was split into two sections, voters in the entire City of Baton Rouge elected African American Judges. Defendants' Exhibit 2, Bates number 289.

316. In 1988, there were two open seats for City Court Judge. Both seats were won by African American candidates over white candidates in an at-large election. Defendants' Exhibit 2, Bates number 290.

317. Since 1988, the African American voter registration in the City of Baton Rouge has increased which supports that an African American candidate has a much better chance of winning a City Court Judge seat in 2014. Defendants' Exhibit 2, Bates number 290.

318. President Obama, Mayor Kip Holden, Constable Reginald Brown, Judge Curtis Calloway, Judge John Michel Guidry, Judge Freddie Pitcher, and others have demonstrated that at least in East Baton Rouge Parish, and specifically in Election Section 2 of the Baton Rouge City Court, the more important factors in predicting who will win an election are the time tested campaign elements of experience, money, political party and which candidate has a resource advantage. Defendants' Exhibit 2, Bates number 288.

PROPOSED FINDINGS OF FACT-- BRUCE ADELSON

319. Bruce Adelson is an expert in the areas of Civil Rights, the Voting Rights Act, redistricting, election matters and allegations of discrimination. Trial Vol. V at pp. 209-210.

320. Judicial officers and their elections should be viewed differently than those of virtually all other publicly elected officials. Trial Vol. V at p. 218; Defendants' Exhibit 3, bates number 926.

321. Because of the specific responsibilities and positions that judges have that are not typically viewed or traditionally viewed as representing constituents, judges are viewed as serving the people. Trial Vol. V at p. 219.

322. Because one-person, one-vote does not apply to judicial elections, redistricting standards for judges are different. Trial Vol. V at pp. 219-220.

323. Dr. Engstrom's report was unique in that he only analyzed elections from 2012. He looked at the November 2012 primary election and the December 2012 runoff elections;

he looked at only 30 days to form an opinion on vote dilution. Trial Vol. V at pp. 221, 222; Defendants' Exhibit 3, Bates number 926.

324. The limited number of election examined by Dr. Engstrom was not enough to establish a pattern. Trial Vol. V at pp. 223, 224.

325. Limiting his analyses to one election cycle is problematic due to contextual factors that must be considered that could affect election outcome. Trial Vol. V at p. 232; 235-236.

326. By analyzing many more elections than did Dr. Engstrom it is revealed that African-American voters in the City of Baton Rouge and East Baton Rouge Parish have consistently been able to participate meaningfully in the electoral process and elect their candidates of choice. Defendants' Exhibit 3, Bates number 926; Trial Vol. V at p. 226.

327. Candidates of choice of African-Americans in the City of Baton Rouge and in the Parish of Baton Rouge have had electoral success. Trial Vol. V at p. 226; Defendants' Exhibit 3, Bates numbers 926-927.

328. The 100% incumbent retention record for Baton Rouge City Court judges, as the data in Angele Romig's report demonstrated between 1993 and 2014, is unprecedented. Defendants' Exhibit 3, Bates number 927; Trial Vol. V at p. 227.

329. This 100% incumbency re-election record confirms how judges are different than other elected officials, with incumbency often playing a large role in determining who is elected and retained as judges. Trial Vol. V at pp. 227,228; Defendants' Exhibit 3, Bates number 927.

330. There are many contextual factors that can affect turnout and election results. Trial Vol. V at p. 232. Whether or not there is a presidential election that year or if it is a non-presidential election year can be a contextual factor that affects an election. Trial Vol. V at p. 225. Voters will consider whether a candidate for judge has been suspended, disbarred, reinstated, had ethical complaints adjudicated against them. Trial Vol. V at p. 228.

331. Suspension from the practice of law by an attorney running for judicial office would be substantively disqualifying for a candidate. Trial Vol. V at p. 231.

332. Experience is a factor that often attorneys will consider in a candidate for judicial office. Limited experience would be an attorney with substantially fewer than ten years of practice, and if the attorney is running against a judicial incumbent who already has the advantage, experience would play a significant role. Trial Vol. V at p. 231.

333. In looking at the City Court election in which Joel Porter ran for judge, an internet search revealed that he had been suspended from the practice of law for one year by the Louisiana Supreme Court. He was also cited days prior to the election for violating the code of Judicial Conduct. Trial Vol. V at p. 229. These issues were contextual factors

that significantly affected his ability to win a judicial election. Trial Vol. V at pp. 229, 252; See Defendants Exhibit 3, Bates number 934; See also Defendants' Exhibit 209-A.

334. In looking at the City Court election in which Tiffany Foxworth ran for judge, there was voter drop-off between the November 2012 election that was a federal, Presidential election and the runoff in December of 2012. Legal experience as compared to the incumbent opponent is another factor. These are contextual factors that significantly affected her ability to win the runoff election. Trial Vol. V at pp. 253, 254.

335. In looking at the Supreme Court election of 2012 in which Judge Guidry was a candidate, he won in the Parish of East Baton Rouge and in the area known as Election Section 2 of the City Court. Trial Vol. V at p. 255. He lost 12 to 1 in Livingston Parish. His opponent, Judge Hughes was from Livingston Parish. This was a contextual factor that affected Judge Guidry's ability to win the Supreme Court seat. Trial Vol. V at p. 255.

336. In looking at the Court of Appeal election of 2012, two of the candidates were republicans and one of the candidates was white. The republican vote total was over 65 percent. Partisan affiliation was a contextual factor that affected the result of the election. Trial Vol. V at pp. 258-259.

337. The results of the four elections analyzed by Dr. Engstrom can be explained by reasons other than racial discrimination. Trial Vol. V at p. 259.

338. Exogenous elections should not be excluded from consideration for a vote dilution analyses. Trial Vol. V at p. 236.

339. The mayoral election of Mayor Kip Holden was a significant exogenous election to consider because Mr. Holden obtained substantial white, cross-over vote support from voters in the area known as Election Section 2 of the City Court. Trial Vol. V at pp. 237-238; Defendants' Exhibit 3, Bates Numbers 929-930.

340. The presidential elections of 2008 and 2012 were significant exogenous elections to consider because the results do not show that white voters voted in a bloc to defeat the African American candidate of choice in the area known as Election Section 2 of the City Court. Trial Vol. V at pp. 238-240; Defendants' Exhibit 3, Bates Number 930.

341. The Baton Rouge City Council has five African American members. Defendants' Exhibit 3, Bates number 930; Trial Vol. V at p. 245. The African American representation on the Council is another example where white voters have not voted in a bloc to prevent minorities from being able to elect candidates of choice. Trial Vol. VI at pp. 245-246.

342. The political process is open to all races in Baton Rouge. Trial Vol. V at p. 268.

343. Black candidates are able to elect their candidate of choice in the City of Baton Rouge. Trial Vol. V at p. 270.

344. In terms of examining the reasonableness of criteria for redistricting, incumbency is a reasonable criteria. Trial Vol. V at pp. 270, 271.

345. Race can be considered in developing a redistricting plan; however it is not appropriate for race to be the only factor considered in developing a redistricting plan. Trial Vol. V at pp. 273-276.

PROPOSED FINDINGS OF FACT-- DR. RONALD E. WEBER

346. Dr. Ronald E. Weber was qualified as an expert in the areas of political science, vote dilution, voter participation and racially polarized voting. Trial Vol. VI, pp. 13-14.

347. Dr. Weber reported on voter registration data by race for the primary and general elections between 1996 and 2012. Defendants' Exhibit 1, p. 16.

348. African American voter registration in the City of Baton Rouge was 53.0% at the time of the November 6, 2012 primary and December 8, 2012 runoff elections. Defendants' Exhibit 1, p. 16.

349. Dr. Weber also reported on voter turnout as a percentage of voter registration for primary and general elections between 1996 and 2012. Defendants' Exhibit 1, p. 20. African American voter turnout in the City of Baton Rouge was 66.6% at the November 6, 2012 primary election and 18.9% at the December 8, 2012 runoff election. White voter turnout was 70.6% at the November 6, 2012 primary election and 25.1% at the December 8, 2012 runoff election. Defendants' Exhibit 1, p. 20.

350. Dr. Weber also reported on voter registration and turnout as a percentage of estimated voting age population in elections from 1996-2012. Defendants' Exhibit 1, pp. 22-23.

351. For the November 6, 2012 primary election, 53.8% of African Americans of voting age in the City of Baton Rouge turned out to vote and 53.6% of whites of voting age turned out to vote. Defendants' Exhibit 1, p. 23.

352. For the December 8, 2012 run-off election, 81 % of African Americans of voting age in the City of Baton Rouge were registered to vote and 76.1% of whites of voting age were registered to vote. Defendants' Exhibit 1, p. 23.

353. For the December 8, 2012 run-off election, 15.3% of African Americans of voting age in the City of Baton Rouge turned out to vote and 19.1% of whites of voting age turned out to vote. Defendants' Exhibit 1, p. 23.

354. Dr. Weber also reported on voter registration and turnout at primary and general elections from 1992-2012. Defendants' Exhibit 1, p. 25-26.

355. For the November 6, 2012 primary election, 53.2 % of the voters who turned out to vote were African American and 44.1% were white. Defendants' Exhibit 1, p. 25.

356. For the December 8, 2012 run-off election, 47.6% of the voters who turned out to vote were African American, and 50.2% were white. Defendants' Exhibit 1, p. 26.

357. Dr. Weber used Professor Gary King's ecological inference program (hereafter EI) to calculate participation rates for primary and runoff elections in 2012 for City Court judge elections; and 2000-2012 Mayor-President elections within the City of Baton Rouge, 2000 and 2012 City Constable elections, 2012 primary and runoff elections for Supreme Court and First Circuit Court of Appeals elections within the City of Baton Rouge, and 2008 and 2012 Presidential Elections in the City of Baton Rouge . Defendants' Exhibit 1, pp. 27-41.

358. In the November 12, 2012 primary election for City Court, Election Section 2, Divisions C and E, African American voters who signed in to vote participated at a slightly higher rate than non-African American voters who signed in to vote. Defendants' Exhibit 1, pp. 28-29.

359. In the December 12, 2012 runoff election for City Court, Election Section 2, Division E, African American voters who signed in to vote participated at a slightly lower rate than non-African American voters who signed in to vote. Defendants' Exhibit 1, pp. 29-30.

360. African American voters who signed in to vote in Mayor-President elections between 2000 and 2012 within the City of Baton Rouge participated at a higher rate than non-African American voters who signed in to vote. Defendants' Exhibit 1, pp. 31-32.

361. African American voters who signed in to vote in the 2000 and 2012 City Constable elections participated at a higher rate than non-African American voters who signed in to vote. Defendants' Exhibit 1, pp. 35-37.

362. In the November 2012 primary and December 2012 runoff election for Supreme Court District 5, African American voters in the City of Baton Rouge who signed in to vote participated at a higher rate than non-African American voters. Defendants' Exhibit 1, pp. 37-38.

363. In the 2008 and 2012 Presidential elections, African American voters in the City of Baton Rouge who signed in to vote participated at a higher rate than non-African American voters. Defendants' Exhibit 1, pp. 40-41.

364. Dr. Weber used Professor Gary King's ecological inference program called EI to analyze three endogenous City Court election contests: two primary election contests and one runoff in Baton Rouge City Court Election Section 2. Defendants' Exhibit 1, pp. 44-49.

365. African American voters were cohesive in all three election contests at varying levels. Non-African-American voters were also cohesive in all three contests. Racially polarized voting occurred in all three election contests. Defendants' Exhibit 1, pp. 49-59.

366. In one of the three election contests for Baton Rouge City Court Election Section 2, the candidate of African Americans' choice, Tiffany Foxworth, advanced to a run-off against the candidate of non-African Americans' choice, Suzan Ponder. In the other two election contests, the candidate of African Americas' choice was defeated by the candidate of non-African Americans' choice.

367. Dr. Weber used EI to analyze six exogenous election contests for Mayor-President within the City of Baton Rouge. Defendants' Exhibit 1, pp. 54-59.

368. African American voters were strongly cohesive in all six elections but only two of the elections were racially polarized. Defendants' Exhibit 1, pp. 59.

369. In five of the six Mayor-President election contests, the candidate of choice of African American voters advanced to the run-off twice (Kip Holden in 2000 and 2004), was the successful candidate in the run-off once (Kip Holden in 2004) and won election in the primary election twice (Kip Holden in 2008 and 2012). In the 2000 run-off the candidate of African America voters' choice (Kip Holden) was defeated by the candidate of choice of non-African American voters' choice (Bobby Simpson). Defendants' Exhibit 1, pp. 54-59.

370. Dr. Weber used EI to analyze six exogenous election contests for Mayor-President within City Court Election Section 2. Defendants' Exhibit 1, pp. 76-82.

371. If all six election contests had been held within the boundaries of Election Section 2, the outcomes would have been different in two of the elections. In the 2000 runoff election, Simpson was the winner in Election Section 2 precincts, while Holden was the winner in the City precincts. In the 2004 primary election, Simpson and Daniel were the top vote getters in Election Section 2 precincts, while Holden and Simpson were the top vote getters in the City precincts. Defendants' Exhibit 1, pp. 76.

372. Dr. Weber used EI to analyze two exogenous election contests for Baton Rouge City Constable. Defendants' Exhibit 1, pp. 59-63.

373. In the 2000 City Constable primary election, African American voters and non-African American voters were cohesive, and voting was racially polarized. The candidate of African American voters' choice, Reginald Brown, was elected. Defendants' Exhibit 1, pp. 59-61.

374. Dr. Weber used EI to analyze one primary and one run-off election contest for Supreme Court District Five. These election contests were analyzed in the precincts located within the boundaries of the City of Baton Rouge and City Court Election Section 2. Defendants' Exhibit 1, pp. 64-67, 83, 86-87.

375. In the November 2012 primary election for Supreme Court District 5, African American voters in the City of Baton Rouge were cohesive in support of African American candidate Judge John Michael Guidry in precincts in the City of Baton Rouge. Non-African American voters in the City were not cohesive for any one candidate, with white candidate Morvant the leading among non-African American voters. Defendants' Exhibit 1, pp. 64-65. Patterns of cohesion and polarization in the precincts in Election Section 2 were similar to the City precincts. Defendants' Exhibit 1, pp. 83, 86-87.

376. African Americans' candidate of choice Judge John Michael Guidry advanced to the run-off with Judge Jeff Hughes. Had the election been conducted only in the City of Baton Rouge, Judge Guidry would have advanced to a run-off with white candidate Mary Olive Pierson. Defendants' Exhibit 1, pp. 64-65. Had the primary been conducted only in Election Section 2, the outcome would have been the same as the precincts in the City. Defendants' Exhibit 1, pp. 83, 86-87.

377. In the December 2012 runoff election, African American voters were cohesive in favor of Judge Guidry, and non-African American voters were cohesive in favor of Judge Hughes, and voting was racially polarized. Judge Guidry was the top voter in the City of Baton Rouge precincts, but Judge Hughes was the winner district-wide. Defendants' Exhibit 1, pp. 65.

378. Dr. Weber used EI to analyze one primary and one run-off election contest for Court of Appeals, First Circuit, Second District, Subdistrict 1. This election was analyzed in the precincts of the City of Baton Rouge that participated in the election, and in the precincts of Baton Rouge City Court Election Section 2 that participated in the election. Defendants' Exhibit 1, pp.68-70, 88-89.

379. In the November 2012 primary, there were 3 candidates – African American Judge Trudy White, African American attorney Gideon Cater, and white incumbent Judge Michael MacDonald. African American voters in the City and in Election Section 2 were cohesive in favor of Carter, and non-African American voters in the City and in Election Section 2 were cohesive in favor of Judge Michael MacDonald. Voting was racially polarized in the City and in Election Section 2. Carter and MacDonald advanced to a run-off. Patterns of cohesion and polarization in the precincts in Election Section 2 were similar to the City precincts. Defendants' Exhibit 1, pp.68-70, 88-89.

380. In the December 2012 runoff, African American voters were cohesive in favor of Carter and non-African American voters were cohesive in favor of MacDonald. Voting was racially polarized, and MacDonald was the winner within City of Baton Rouge precincts and Baton Rouge Election Section 2 precincts. Defendants' Exhibit 1, pp. 68-70, 88-89.

381. Dr. Weber used EI to analyze the 2008 and 2012 Presidential Elections in the City of Baton Rouge precincts and Baton Rouge Election Section 2 precincts. Defendants' Exhibit 1, pp.71-75, 90-92.

382. In 2008, African American voters were cohesive in favor of President Obama and non-African American voters were cohesive in favor of Senator McCain within the precincts of the City of Baton Rouge and Election Section 2. Voting was racially polarized. President Obama was the winner within the City of Baton Rouge precincts and Senator McCain was the winner in the City Court Election Section 2 precincts. Defendants' Exhibit 1, pp.71-75, 90-92.

383. In 2012, African American voters were cohesive in favor of President Obama and non-African American voters were cohesive in favor of Mitt Romney. Voting was racially polarized. President Obama was the winner within the City of Baton Rouge precincts and in the City Court Election Section 2 precincts. Defendants' Exhibit 1, pp.71-75, 90-92.

384. African Americans were cohesive in 13 exogenous elections involving African-American candidates and white candidates within precincts in the City of Baton Rouge. In 12 of those 13 elections, the candidate of African American choice either advanced to the run-off or won the election in the precincts of the City of Baton Rouge that participated in the election. The only exogenous election where this did not occur was the December 2012 runoff between Gideon Carter and Judge MacDonald for the First Circuit Court of Appeal. Defendants' Exhibit 1, pp.68- 70, 96.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that, on December 10, 2014, I electronically filed the forgoing with the Clerk of Court by using the CM/EMF system, which will send a notice of electronic filing to all counsel of record.

/s/Angelique Duhon Freel
Angelique Duhon Freel