

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

KENNETH HALL,
Plaintiff

and

BYRON SHARPER,
Plaintiff-Intervenor

VERSUS

STATE OF LOUISIANA, "BOBBY"
in his official capacity as Governor of
the State of Louisiana, JAMES D.
"BUDDY" CALDWELL, in his official
capacity as Attorney General of the State
of Louisiana, and TOM SCHEDLER,
in his official capacity as the Secretary of
State of Louisiana, the CITY OF
BATON ROUGE, PARISH OF EAST
BATON ROUGE, and MELVIN "KIP"
HOLDEN, in his capacity as
Mayor-President of the City of Baton
Rouge and Parish of East Baton Rouge
Defendants

CIVIL ACTION 3:12-cv-657

CHIEF JUDGE BRIAN A. JACKSON

MAGISTRATE RICHARD L. BOURGEOIS

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW ON BEHALF OF
DEFENDANTS CITY OF BATON ROUGE, PARISH OF EAST BATON ROUGE AND
THE HONORABLE MELVIN "KIP" HOLDEN, IN HIS CAPACITY AS
AS MAYOR-PRESIDENT OF THE CITY OF BATON ROUGE
AND THE PARISH OF EAST BATON ROUGE**

MAY IT PLEASE THE COURT:

These Proposed Findings of Fact and Conclusions of Law are submitted on behalf of the City of Baton Rouge, the Parish of East Baton Rouge, and the Honorable Melvin "Kip" Holden, in his official capacity as Mayor-President of the City of Baton Rouge and Parish of East Baton Rouge, Defendants in the above captioned matter (hereafter the "City-Parish Defendants"). This

matter came before the Court in a bench trial August 4-6, 2014 and continuing November 17-19, 2014.

PLAINTIFF AND PLAINTIFF-INTERVENOR’S CLAIMS AGAINST THE CITY-PARISH DEFENDANTS

The Plaintiff, Kenneth Hall, and the Plaintiff-Intervenor, Byron Sharper (hereafter collectively the “Plaintiffs”) claim that the continued maintenance and operation of Act 609 of 1993 intentionally discriminates against them on the basis of race in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution. The Plaintiffs also contend that Act 609 of 1993, as presently constructed, dilutes the voting strength of the African-American voters in the City of Baton Rouge in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and Section 2 of the Voting Rights Act. The Plaintiffs have not specified what relief they seek against the City-Parish Defendants. Their factual allegations against the City-Parish Defendants are as follows:

The Plaintiffs contend that “African American citizens formally and informally requested the Baton Rouge Metro-Council to amend the Judicial Election Plan by submitting a resolution to the Louisiana Legislature.” (Final Pre-trial Order (Rec. Doc. 359) p. 45 at Paragraph 261).

The Plaintiffs further contend that “African American citizens appeared before the Metro-Council on December 12, 2012 requesting that they approve and adopt a resolution amending Act 609 to change the subdistrict lines and provide a minority-majority subdistrict electing three judges and a majority-majority subdistrict electing two judges. The Metro-Council did not submit a resolution to the Louisiana Legislature.” (Rec. Doc. 359, p. 46, at Paragraph 265).

PROPOSED FINDINGS OF FACT WITH RESPECT TO THE PLAINTIFF KENNETH HALL

1. Kenneth Hall is an African-American. Transcript, Vol. I,
2. Kenneth Hall was born April 17, 1986. He registered to vote in 2004, when he turned eighteen. Transcript, Vol. I, pp. 99-100.
3. He had no problems registering to vote. Transcript, Vol. I, p. 104.
4. Kenneth Hall was working in Iowa at the time of the 2012 City Court elections. He requested an absentee ballot for the November 2012 primary election while in Iowa. Transcript, Vol. I, p. 86.
5. Mr. Hall had been in Iowa for a month or two when he requested the absentee ballot for the November 2012 election. Transcript, Vol. I, p. 101. He was in Iowa for five or six months. Transcript, Vol. I, p. 100.
6. Mr. Hall was aware that there was a runoff election in December of 2012. Transcript, Vol. I, p. 101.
7. He did not request an absentee ballot for the runoff election in December of 2012. Transcript, Vol. I, pp. 101-102.
8. Prior to 2012, Mr. Hall never voted in a Baton Rouge City Court election. Transcript, Vol. I, p. 102.

PROPOSED FINDINGS OF FACT WITH RESPECT TO THE PLAINTIFF-INTERVENOR BYRON SHARPER

9. Byron Sharper is an African-American. Transcript, Vol. I, p.106.
10. Mr. Sharper registered to vote in 1985, when he was a freshman at Southern University. Transcript, Vol. I., p. 120.
11. He has not had any problems going to the polls and voting. Transcript, Vol I p. 120.
12. In 2000, Byron Sharper ran for and was elected to the metropolitan council, District Seven. Transcript, Vol. I, p. 107
13. He served on the Metropolitan Council from January 1, 2001 to December 31, 2008. Transcript, Vol. I p.118.
14. He was on the metropolitan council at the time the 2000 census would have been released by the United States Government. Transcript, Vol. I p. 118.

15. During his time on the Metropolitan Council, Mr. Sharper never introduced any resolution or other action to redistrict or reapportion the city court for the City of Baton Rouge. Transcript, Vol. I, p. 118.

16. Mr. Sharper testified he thinks he lives in Election Section 2 of the Baton Rouge City Court. Transcript, Vol. I, pp.106 & 108.

17. The parties stipulated that Mr. Sharper is registered to vote in Election Section 1 of the Baton Rouge City Court, the majority African-American subdistrict consisting of two judicial offices (Divisions "B" and "D").(Rec. Doc 359, p.36, numbered paragraph 207).

18. Mr. Sharper voted in the City Court election when Kelli Temple was elected. Transcript, Vol. I, p. 118.

19. Kellie Terrell Temple was elected to Baton Rouge City Court, Division B, and has served on the Baton Rouge City Court, Division B, since May 15, 2009. Plaintiff's Exhibit 23, p.2. Division B is elected from Election Section One of the Baton Rouge City Court. (Rec. Doc 359, p.36, numbered paragraph 207).

20. Mr. Sharper worked on several campaigns and his own campaigns. Transcript, Vol. I, pp. 107-108.

21. Mr. Sharper worked on the campaigns of Joel Porter and Tiffany Foxworth for Baton Rouge City Court, but he did not vote in those elections. Transcript, Vol. I, p.109.

22. Mr. Sharper did not encounter any racial appeals from any candidates in any race he worked in. Transcript, Vol. I, p. 114.

23. Mr. Sharper was succeeded on the Metropolitan Council by Ms. C. Denise Marcelle (Transcript, Vol. I, p.119).

PROPOSED FINDINGS OF FACT WITH RESPECT TO THE TESTIMONY OF METROPOLITAN COUNCIL MEMBER C. DENISE MARCELLE

24. C. Denise Marcelle was elected to the Metropolitan Council from District 7 in 2008 and is currently a member of the Metropolitan Council (Transcript, Vol. II, pp. 95-96).

25. Ms. Marcelle is African-American. (Transcript, Vol. II, p. 97).

26. During her service on the Metropolitan Council, Ms. Marcelle has not supported or made any resolution or proposal to the Metropolitan Council with regard to restructuring the Baton Rouge City Court (Transcript Vol. II, p. 97), altering the districts from which the Baton Rouge City Court Judges run (Transcript Vol. II, pp. 106-107), or increasing the number of judges on the Baton Rouge City Court (Transcript, Vol. II, pp. 111-112).

27. There are five African American and seven whites on the Metropolitan Council. (Transcript Vol. II, p. 100).
28. During her service on the Metropolitan Council, no African-American Metropolitan Council members have taken any steps to have the reapportionment or redistricting of the Baton Rouge City Court districts placed on an agenda for discussion by the Metropolitan Council. Transcript, Vol. II, p.107
29. Ms. Marcelle put an item on the Metropolitan Council agenda to allow Judge Don Johnson to make a presentation to the Metropolitan Council in 2013. (Transcript, Vol. II, pp. 97-98).
30. Judge Don Johnson appeared before the Metropolitan Council some time in 2013 to make a demonstration “about the demographics of the city as it relates to the city judges” (Transcript Vol. II p. 105). Judge Johnson was listed as a witness by the Plaintiffs but he was not called to testify.
31. After Judge Don Johnson’s demonstration, Ms. Marcelle did not support or recommend sending a resolution to the Louisiana Legislature for the restructuring of the Baton Rouge City Court. (Transcript Vol. II, p. 97).

PROPOSED FINDINGS OF FACT WITH RESEPECT TO THE TESTIMONY OF JUDGE TRUDY WHITE

32. Judge Trudy White is currently a judge on the 19th Judicial District Court and was formerly a judge on the Baton Rouge City Court.
33. In 2005, there was an attempt to petition the Louisiana Supreme Court for a sixth judgeship for the Baton Rouge City Court, and all of the Baton Rouge City Court Judges were publicly in favor of adding a sixth judge. (Transcript, Vol. I, p. 252.)
34. The effort to get a sixth judge for the Baton Rouge City Court was unsuccessful because the City Court judges were unable to secure a commitment from the Mayor’s office that the City-Parish would fund the sixth judgeship. (Transcript, Vol. I, p. 256).
35. The minutes of an April 18, 2005 meeting of the Judicial Council (Defendants’ Exhibit 181), reflect that Judge White appeared before the Judicial Council and asked for a deferral of consideration of a sixth judgeship based on budgetary issues. Judge testified that the deferral “was requested because we didn’t - - we wanted to leave it on the table.” (Transcript, Vol. I, p. 264).
36. Judge Trudy White ran for the First Circuit Court of Appeal in November of 2012. Transcript, Vol. I, p. 266

37. There were three candidates in the race: Judge Trudy White, Gideon Carter, an African-American who ran as a Democrat, and incumbent Judge Mike McDonald, who is white. Transcript, Vol. I, pp. 266-268

38. In the November 2012 primary election, Judge Trudy White and Gideon Carter combined received more votes than Judge Mike McDonald. Transcript, Vol. I, p. 268.

39. The November 2012 election was politically polarized as opposed to racially polarized. Transcript, Vol. I, p. 273.

40. Judge White had no knowledge of racial appeals on behalf of any of the defendants in the case, including officials with the State of Louisiana, any officials with Parish of East Baton Rouge, or and officials with the City of Baton Rouge. Transcript, Vol. I, p. 276.

PROPOSED FINDINGS OF FACT WITH RESPECT TO THE TESTIMONY OF ALFRED WILLIAMS

41. Alfred Williams is a state representative for District 61 of the Louisiana Legislature. Transcript, Vol. II, p.260.

42. Mr. Williams is African American. Transcript, Vol. II, p. 293.

43. Mr. Williams was the Assistant Chief Administrative Officer for Mayor Holden at the time a request for a sixth Baton Rouge City Court judgeship was made by the City Court judges.

44. Mr. Williams met with Mr. Lon Norris and Mr. Ron Johnson about the creation of a sixth judgeship. He also discussed the sixth judgeship with Mayor Holden and other staff and was told that the funding resources were not available at that time. (Transcript, Vol. II, p. 262).

45. Mr. Williams identified a letter dated March 23, 2005 (Defendants' Exhibit 219), whereby he informed the Baton Rouge City Court judges that funding was not available for a sixth City Court judgeship. (Transcript, Vol. II, p. 287-288).

46. Mr. Williams introduced House Bill 318 in the 2013 Legislative Session. Plaintiffs' Exhibit 13; Transcript, Vol. II, p. 265.

47. Mr. Williams wanted to see three African-Americans in one subdistrict of the City Court and two whites in the other subdistrict. Transcript, Vol. II, p. 266.

48. House Bill 318 would have allowed an incumbent City Court judge whose seat was assigned from the majority white election section to the majority African American election section to complete the current term. Transcript, Vol. II, p. 266.

49. House Bill 318 was defeated on the floor of the House of Representatives. Transcript, Vol. II, p. 275

50. Mr. Williams introduced House Bill 198 in the 2014 Legislative Session. Transcript, Vol. II, p. 276.

51. House Bill 198 was the same as House Bill 318 with a few minor precinct changes. Transcript, Vol. II, p. 277.

52. House Bill 198 was not voted favorably out of the House Governmental Affairs Committee. Transcript, Vol. II, p. 277.

53. Erich Ponti introduced House Bill 1151 in the 2014 Legislative Session that would have allowed for election of Baton Rouge City Court Judges citywide. Transcript, Vol. II, pp. 278, 296.

54. Black and white members of the House of Representatives, including Mr. Williams, voted in favor of House Bill 1151. Transcript, Vol. II, p. 279.

55. House Bill 1151 passed in the House of Representatives by a vote of 87-0. Transcript, Vol. II, p. 296.

56. House Bill 1151 was amended in the Senate to provide for two African American seats to be elected in a subdistrict and two white seats to be elected in a subdistrict, and one seat to be elected citywide. Transcript, Vol. II, p. 280.

57. Mr. Williams lobbied the Louisiana Senate to either make House Bill 1151a 3-2 bill or not to let it go forward. Transcript, Vol. II, p. 280.

58. Mr. Williams endorsed Judge Wall and Judge Ponder for City Court in 2012. . Transcript, Vol. II, p. 293.

PROPOSED FINDINGS OF FACT WITH RESPECT TO THE TESTIMONY OF TIFFANY FOXWORTH

59. Tiffany Foxworth is African American. Transcript, Vol. II, p. 45

60. She was a candidate for City Court Judge, Election Section 2, Division E in the November, 2012 primary election. She ran against incumbent Judge Suzan Ponder and attorney Cliff Ivey. Transcript, Vol. II, p. 46.

61. At the time of the November 2012 election, Judge Suzan Ponder had been a City Court Judge for 19 years, since May, 1993. Plaintiff's Exhibit 23, p.1

62. Ms. Foxworth finished second in the November 2012 primary election and advanced to a December 2012 run-off against incumbent Judge Suzan Ponder. Transcript, Vol. II, p.46

63. Ms. Foxworth received 24,065 votes in the November 2012 primary election. Judge Suzan Ponder received 25, 002 votes in the November 2012 primary. Plaintiffs' Exhibit 77.

64. Ms. Foxworth received 7729 votes in the December 2012 run-off election. Judge Ponder received 13,189 votes in the December 2012 run-off election. Plaintiffs' Exhibit 78.
65. Prior to running for City Court Judge, Ms. Foxworth ran for state representative in District 101. Transcript, Vol. II, p.65.
66. A portion of District 101 is in Election Section 2 of the Baton Rouge City Court. Transcript, Vol. II, p.65.
67. Ms. Foxworth distributed campaign literature in her campaign for state representative District 101 with her picture on it. Transcript, Vol. II, p.66.
68. Ms. Foxworth had a Facebook page "Foxworth for Louisiana" in connection with her campaign for state representative District 101. Transcript, Vol. II, p.70.
69. Ms. Foxworth's Facebook page "Foxworth for Louisiana" had a picture of Ms. Foxworth on it. Defendants' Exhibit 216.
70. A post was made by Ms. Foxworth or on her behalf on Ms. Foxworth's facebook page "Foxworth for Louisiana" soliciting support for her City Court campaign. At the time the post was made, the Facebook page contained a picture of Ms. Foxworth. Defendants' Exhibit 216.

PROPOSED FINDINGS OF FACT WITH RESEPECT TO THE TESTIMONY OF JUDGE JOHN MICHAEL GUIDRY

71. Judge John Michael Guidry is a judge on the Louisiana First Circuit Court of Appeal, and has been a judge on the First Circuit since 1997. Transcript, Vol. II, p.174.
72. Judge Guidry is African American. Transcript, Vol. II, p. 175.
73. Judge Guidry was a candidate for the Louisiana Supreme Court District 5 in 2912, Transcript, Vol. II, p. 176.
74. Judge Guidry ran against 7 other candidates, all of whom were white. Defendants' Exhibit 1, p. 66, Transcript, Vol. II, p. 177.
75. Three of Judge Guidry's opponents in the November 2012 primary were judges on the First Circuit Court of Appeal – Judge Toni Higginbotham, Judge Duke Welch and Judge Jeff Hughes. Transcript, Vol. II, p. 176.
76. Two of Judge Guidry's opponents in the November 2012 primary were judges on the 19th Judicial District Court – Judge Kelly and Judge Morvant. Transcript, Vol. II, p. 176.
77. Judge Guidry got the most votes in the November 2012 primary and advanced to the December 2012 run-off against Judge Jeff Hughes. Transcript, Vol. II, p. 178.

78. Judge Guidry was defeated by Judge Hughes in the December 2012 run-off. Transcript, Vol. II, p. 179.

79. Judge Guidry's chief fundraiser for the December 2012 run-off election was white. Transcript, Vol. II, p. 203.

80. There were African Americans and whites who were part of Judge Guidry's campaign committee who assisted Judge Guidry in raising money and who contributed to Judge Guidry's campaign. Transcript, Vol. II, p. 204.

81. There were members of the legal community, both black and white and Democrat and Republican, that supported Judge Guidry's candidacy. Transcript, Vol. II, p. 204.

82. Judge Guidry received the majority of the votes cast in the December 2012 runoff election in the City of Baton Rouge and the Parish of East Baton Rouge. Transcript, Vol. II, p. 205.

83. Judge Guidry was a member of the Louisiana Senate in 1993. Transcript, Vol. II, p. 192.

84. He introduced legislation in the Senate in 1993 to subdivide the Baton Rouge City Court into subdistricts. Transcript, Vol. II, p. 192.

85. Judge Guidry's Senate bill was approved by the 1993 Legislature and became Act 609 of 1993. Transcript, Vol. II, p. 194.

86. In crafting Judge's Guidry's bill, which ultimately became Act 609 of 1993, Judge Guidry directed legislative staff to draw a constitutionally permissible set of districts which comported to the racial population of the city. The staff was to consider the racial make up of the city, but also ensure that the districts were drawn in such a way that comported within jurisprudence. Transcript, Vol. II, p. 197.

87. Act 609 of 1993 was not drawn with the intent to discriminate against minority voters. Transcript, Vol. II, p. 198.

FINDINGS OF FACT AS TO THE TESTIMONY OF NANCY JENSEN

88. Prior to this proceeding, Nancy Jensen has never been qualified as an expert in or testified before any federal district court. Transcript, Vol. II, p. 123.

89. Prior to this proceeding, Ms. Jensen had never been qualified as an expert in demographics or drawing districts for elections. Transcript, Vol. II, p. 124.

90. Prior to this proceeding, Ms. Jensen had been qualified in state courts in West Baton Rouge and Livingston Parishes as an expert in interpreting the Census. Transcript, Vol. II, p. 124.

91. Prior to this proceeding, Ms. Jensen had never been involved in drawing any boundaries for any judicial districts in the State of Louisiana. Transcript, Vol. II, p. 143.
92. Prior to this proceeding, Ms. Jensen had never been involved in changing the boundaries of any judicial districts in the State of Louisiana. Transcript, Vol. II, p. 144.
93. After the 2000 Census, Ms. Jensen drew a reapportionment plan for the City of Plaquemine, and submitted the plan to the United States Department of Justice for preclearance under Section 5 of the Voting Rights Act. Transcript, Vol. II, pp. 144- 145.
94. The Department of Justice rejected the reapportionment plan for the City of Plaquemine because it was determined by the DOJ that it was retrogressive. Transcript, Vol. II, p. 145.
95. After the 2010 Census, Ms. Jensen drew a reapportionment plan for East Feliciana Parish, and submitted the plan to the United States Department of Justice for preclearance under Section 5 of the Voting Rights Act. Transcript, Vol. II, p. 145.
96. The Department of Justice rejected the reapportionment plan for East Feliciana Parish because it was determined by the DOJ that it was retrogressive. Transcript, Vol. II, p. 145.
97. After the 2010 Census, Ms. Jensen drew a reapportionment plan for Livingston Parish, and submitted it to the United States Department of Justice for preclearance under Section 5 of the Voting Rights Act. Transcript, Vol. II, p. 147.
98. The Department of Justice rejected the reapportionment plan submitted by Ms. Jensen for Livingston Parish. Transcript, Vol. II, p. 145.
99. When creating the proposed City Court single member districts for the Baton Rouge City Court, Ms. Jensen's sole criteria for including a precinct in the district was the racial composition of the precinct. Transcript, Vol. II, p. 152.
100. Ms. Jensen was not asked to and did not look at the City of Baton Rouge as a whole and determine how many single member districts could be drawn which were majority African American. Transcript, Vol. II, p. 153.
101. The primary criteria Ms. Jensen used in drawing the districts identified as Plan A and Plan B was the race of the people who lived in the proposed district. Transcript, Vol. II, p. 153.
102. According to Ms. Jensen, the race of the people who live in a district is the primary criteria for all minority districts for any redistricting plan. Transcript, Vol. II, pp. 153-154.
103. The primary redistricting principle used by Ms. Jensen in creating proposed Plan A and proposed Plan B is that the district be at least 65 percent African American in population and 58 percent African American registered voters. Transcript, Vol. II, p. 154.

104. Ms. Jensen lists “Avoid compacting a district just to create an African American district” as a redistricting principle she used in creating proposed Plan A and proposed Plan B. Plaintiffs’ Exhibit 62, Bates no. Hall 00905.

105. Ms. Jensen’s “avoid compacting” principle was meant to avoid packing African American voters in majority African American districts. Transcript, Vol. II, p. 156.

106. Ms. Jensen did not calculate what percentage of African Americans in the City of Baton Rouge would be included in majority African American subdistricts under her proposed Plan A or Plan B. Transcript, Vol. II, p. 156.

107. Under Ms. Jensen’s proposed Plan A, 78% of the African American population of the City of Baton Rouge would be included in majority African American election sections Districts (District 1 and proposed District 2-1) ($65,208 + 32,575$ divided by $125,257 = 78.06\%$) Plaintiffs’ Exhibit 64, Bates no. Hall 00933.

108. Under Ms. Jensen’s proposed Plan A, 78.34% of the African American voting age population of the City of Baton Rouge would be included in majority African American Districts (Election Section 1 and proposed District 2-1) ($46,533 + 23,163$ divided by $88,960 = 78.34\%$) Plaintiffs’ Exhibit 64, Bates no. Hall 00934.

109. Under Ms. Jensen’s proposed Plan A, 80% of the African American registered voters in the City of Baton Rouge would be included in majority African American Districts (Election Section 1 and proposed District 2-1) ($39,263 + 19,158$ divided by $72,917 = 80.11\%$). Plaintiffs’ Exhibit 64, Bates no. Hall 00934.

110. Under Ms. Jensen’s proposed Plan B, 78% of the African American population of the City of Baton Rouge would be included in majority African American Districts (Election Section 1 and proposed District 2-1) ($64,601 + 33,181$ divided by $125,257 = 78.06\%$) Plaintiffs’ Exhibit 65, Bates no. Hall 00938.

111. Under Ms. Jensen’s proposed Plan B, 78.34% of the African American voting age population of the City of Baton Rouge would be included in majority African American Districts (Election Section 1 and proposed District 2-1) ($46,092 + 23,604$ divided by $88,960 = 78.34\%$) Plaintiffs’ Exhibit 65, Bates no. Hall 00939.

112. Under Ms. Jensen’s proposed Plan B, 80% of the African American registered voters in the City of Baton Rouge would be included in majority African American Districts (Election Section 1 and proposed District 2-1) ($39,263 + 19,158$ divided by $72,917 = 80.11\%$). Plaintiffs’ Exhibit 65, Bates no. Hall 00939.

113. Ms. Jensen did not attempt to draw a proposed single member district that included parts of Election Section 1 and parts of Election Section 2 to determine if a majority African American district could be drawn that did not result in packing African Americans in majority African American districts. Transcript, Vol. II, p. 157.

114. Ms. Jensen was told by Plaintiffs' counsel that, when drawing her proposed single member district, District [Election Section] 1 of the Baton Rouge City Court should be left alone and that District [Election Section] 2 should be divided. Transcript, Vol. II, p. 157.

115. If Election Section 1 and proposed District 2-1 in Jensen's Plan A were combined to form one district, that district would be 78% African American in total population, 78.34% African American in voting age population, and 80% African American in voter registration. Plaintiffs' Exhibit 64, Bates no. Hall 00933; Plaintiffs' Exhibit 64, Bates no. Hall 00934.

116. If Election Section 1 and proposed District 2-1 in Jensen' Plan B were combined to form one district, that district would be 78% African American in total population, 78.34% African American in voting age population, and 80% African American in voter registration. Plaintiffs' Exhibit 64, Bates no. Hall 00933; Plaintiffs' Exhibit 65, Bates no. Hall 00938.

117. Jensen lists the redistricting principles she followed in drafting her proposed redistricting plan for Baton Rouge City Court. See 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)]."

118. 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 has published since at least 1990 to coincide with the release of the decennial census. DOJ published its latest Redistricting Guidance [Guidance] in 2011. See: Federal Register, Volume 76, Number 27, and February 9, 2011.

119. 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 at the time she wrote her report. See Plaintiffs' Exhibit 62, Hall 00906.

120. *Shelby County* notwithstanding, Jensen did not prepare a redistricting plan that complied 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).

121. 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.

122. 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.

123. Concerning judicial redistricting, Jensen admitted that she had no prior experience in creating judicial districts. Jensen's report 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.

124. In her testimony, Jensen agreed that "the only criteria that [she was] using [in her proposed district plan] ... was the racial composition of the precincts." Transcript, Vol. II, p. 152, Paragraphs 17-21. Jensen's report also does not discuss the percentage of African-American Voting Age Population needed to elect candidates of choice in any of her proposed districts or in any other election configuration. Instead, she chose 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 (Transcript, Vol II, p. 153, Paragraphs 17-21) or an at-large system for the election of City Court judges.

125. Ms. Jensen submitted no other plan, nor did the Plaintiffs' other witnesses indicate any alternative redistricting plan.

126. An at-large redistricting plan was proposed through legislation in 2014 (House Bill 1151) which passed unanimously in the House of Representatives but which the Plaintiffs' attorney opposed. See Plaintiffs' Exhibit 14. House Bill 1151 was later amended to a 2-2-1 plan, with two judges being elected from an Election Section that is majority African American, two judges being elected from an Election Section that is majority non-African American, and the fifth judge being elected at large from the City of Baton Rouge. African American members of the Louisiana Senate opposed amended House Bill 1151 and its 2-2-1 plan on the Senate Floor, amended it to a 3-2 plan, and ultimately it failed to pass. Transcript, Vol. 4, p. 232-235. See Joint Exhibits 1 and 2 – video recording of the debate on House Bill 1151. Ms. Jensen did not analyze either of these proposed redistricting plans in her report.

PROPOSED FINDINGS OF FACT AS TO THE TESTIMONY OF DR. RICHARD ENGSTROM

127. Dr. Richard Engstrom analyzed seven election contests, four of which were contests which were on the ballot of the primary election held on November 6, 2012 and three of which

were on the ballot of the run-off election held on December 8, 2012. Plaintiffs' Exhibit 59, Bates no. Hall 00865-00867-870.

128. Dr. Engstrom used Professor Gary King's ecological inference program called EI, version R. Transcript, Volume 4, p. 109

129. Three of the election contests examined by Dr. Engstrom were endogenous City Court elections conducted in Election Section 2. These three elections were: the November, 2012 primary election for Division C between African American attorney Joel Porter and white incumbent Judge Alex "Brick" Wall; the November, 2012 primary election for Division E among African American attorney Tiffany Foxworth, white attorney Clifford Ivey, and white incumbent Judge Suzan Ponder, and the December, 2012 runoff election for Division E between Ms. Foxworth and Judge Ponder. Plaintiffs' Exhibit 59, Bates no. Hall 00865-00867.

130. Four of the election contests were exogenous elections conducted within the City of Baton Rouge as well as other geographic areas. These four elections were: the November 2012 primary election for the Court of Appeals, First Circuit, Subdistrict 1, Division B among African American Judge Trudy White, African American attorney Gideon Carter, and white incumbent Judge Michael MacDonald; the November, 2012 primary election for Supreme Court District 5 among African American Judge John Michael and seven white candidates; and the December, 2012 runoff election between Judge Guidry and Judge Jeff Hughes. Plaintiffs' Exhibit 59, Bates no. Hall 00867-00870.

131. All of the election contests examined by Dr. Engstrom took place within a period of 32 days. Transcript, Vol. 4, p. 169.

132. Not all precincts in the City of Baton Rouge were eligible to vote in the First Circuit Court of Appeals primary and runoff elections examined by Dr. Engstrom. Dr. Engstrom analyzed the results of these election contests in all of the precincts in the City of Baton Rouge that were eligible to vote in the City of Baton Rouge. Transcript, Vol. 4, p. 169.

133. All of the precincts in the City of Baton Rouge were eligible to vote in the Supreme Court primary and general elections, and Dr. Engstrom analyzed the results of these election contests in all precincts in the City of Baton Rouge. Transcript, Vol. 4, pp. 169-170.

134. Dr. Engstrom did not analyze the First Circuit Court of Appeals primary or runoff election contests or the Supreme Court primary or runoff election contests in precincts located in Election Section 2 of the Baton Rouge City Court. Transcript, Vol. 4, p. 170.

135. Among the election contests examined by both Dr. Engstrom and Dr. Ronald Weber, Dr. Engstrom considered the estimates to be quite substantively similar, and Dr. Engstrom did not consider there to be any material differences between his estimates of support for African American candidates and Dr. Weber's estimates of support for African American candidates. Transcript, Vol. 4, p. 144-145.

136. In his review of House Bill 318 introduced in the 2013 legislative session, Dr. Engstrom considered only whether the Election Sections in the bill were geographically contiguous and compact. Plaintiffs' Exhibit 59, Bates no. Hall 00874; Transcript, Vol. 4, page 150.

137. In his review of Ms. Jensen's proposed Plan A, Dr. Engstrom considered only whether the proposed single member district was were geographically contiguous and compact. Plaintiffs' Exhibit 60, Bates no. Hall 00878; Transcript, Vol. 4, page 152.

138. An at-large redistricting plan was proposed through legislation in 2014 (House Bill 1151) which passed unanimously in the House of Representatives but which the Plaintiffs' attorney opposed. See Plaintiffs' Exhibit 14. House Bill 1151 was later amended to a 2-2-1 plan, with two judges being elected from an Election Section that is majority African American, two judges being elected from an Election Section that is majority non-African American, and the fifth judge being elected at large from the City of Baton Rouge. African American members of the Louisiana Senate opposed amended House Bill 1151 and its 2-2-1 plan on the Senate Floor, amended it to a 3-2 plan, and ultimately is failed to pass. Transcript, Vol. 4, p. 232-235. See Joint Exhibits 1 and 2 – video recording of the debate on House Bill 1151.

139. Dr. Engstrom did not analyze either of these proposed redistricting plans or opine whether either of these plans would cure the alleged vote dilution in the election of Baton Rouge City Court judges.

PROPOSED FINDINGS OF FACT AS TO THE TESTIMONY OF DR. RAPHAEL CASSIMERE

140. Dr. Cassimere was aware that Judge Freddie Pitcher is an African American who was elected to the Baton Rouge City Court in an election that was held at-large from the City of Baton Rouge. Transcript, Vol. 4, p.71.

141. Dr. Cassimere did not know the voter registration statistics for the City of Baton Rouge when Judge Freddie Pitcher was elected to the Baton Rouge City Court. Transcript, Vol. 4, p.71.

142. Dr. Cassimere was aware that Judge Tyson and Judge Calloway were African Americans who were elected to the Baton Rouge City Court in an election that was held at-large from the City of Baton Rouge. Transcript, Vol. 4, pp.71-72.

143. Dr. Cassimere did not know the current African American voter registration for the City of Baton Rouge or what percentage of the African American voting age population is registered to vote in the City of Baton Rouge. Transcript, Vol. 4, pp.72-73.

144. Dr. Cassimere was aware that Mayor-President Holden is African American and that he is elected from East Baton Rouge Parish as a whole. Transcript, Vol. 4, p.73

145. Dr. Cassimere had no direct knowledge of the racial make-up of East Baton Rouge Parish, but thinks it is slightly majority white. Transcript, Vol. 4, p.74.

145. Dr. Cassimere did not know whether any districts lines were re-drawn for judicial districts after the 2000 Census or the 2010 Census. Transcript, Vol. 4, pp.75-76.

146. Dr. Cassimere could not identify any area in the State of Louisiana where single member districts have been drawn for the election of judges. Transcript, Vol. 4, p.77.

PROPOSED FINDINGS OF FACT WITH RESPECT TO THE METHOD OF ELECTING BATON ROUGE CITY COURT JUDGES

147. 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.

148. 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.

149. There has never been a finding of a Section 2 violation against the Baton Rouge City Court.

150. 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.

151. The Court in *Clark* provided a detailed breakdown of the judicial districts it found in violations and reevaluated them. There were no City Courts outlined in the Court’s reevaluation. *Clark*, 777 F.Supp. at 453-465.

152. The Baton Rouge City Court was simply mentioned as an exogenous election analyzed by an expert in the case. *Id.*

153. 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).

154. Three African-Americans, Judges Freddie Pitcher, Curtis Calloway and Ralph Tyson, were elected to the Baton Rouge City Court at-large, citywide, by divisions, run-off from the City of Baton Rouge.

155. 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.

156. 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).

157. 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).

158. 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, voting age population and voter registration.

159. 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 voting age population and voter registration.. Transcript, Vol. I, p. 218.

160. 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.6, pp. 5, 8.

161. 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.

162. 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.

163. 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.

164. 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

165. 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).

166. 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.

PROPOSED FINDINGS OF FACT AS TO THE CITY OF BATON ROUGE AND THE PARISH OF EAST BATON ROUGE AND THE MAYOR-PRESIDENT

167. 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.

168. 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.

169. 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.

170. The current Mayor-President of the City of Baton Rouge and the Parish of East Baton Rouge is Melvin "Kip" Holden, who is African American. Holden was first elected in 2004, and was re-elected in 2008 and 2012. The office of Mayor-President is elected from the Parish of East Baton Rouge.

171. The voter registration of East Baton Rouge Parish at the time Mayor-President Holden was first elected Mayor-President in 2004 was 59.7% white and 36.1% African American. The voter registration of East Baton Rouge Parish at the time Mayor-President Holden was re-elected in 2008 was 55.6% white and 40.1% African America at the time of the October 2008 primary and 55.0% white and 40.6% African American at the time of the November 2008 runoff. The voter registration of East Baton Rouge Parish at the time Mayor-President Holden was re-elected in the November 2012 primary election was 53.0% white and 42.6% African American. Defendants' Exhibit 1, p.16.

172. The current City Constable, Reginald Brown, is African American. Mr. Brown was first elected in 2000, was unopposed in 2006, and was re-elected in 2012. The office of City Constable is elected from the City of Baton Rouge.

173. The voter registration of the City of Baton Rouge at the time Mr. Brown was first elected City Constable in 2000 was 52.2% white and 43.9% black.

174. There was no testimony presented that any African-American citizen appeared before the Metropolitan Council to request that the Council "approve and adopt a resolution amending Act 609" other than the appearance by Judge Don Johnson in 2013.

PROPOSED FINDINGS OF FACT AS TO THE TESTIMONY OF DR. RONALD WEBER

175. Dr. Ronald E. Weber was qualified as an expert in the areas of political science, vote dilution, voter participation and racially polarized voting. Transcript, Vol. 6, p. 13-14.

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

177. 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, page 16.

178. 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, page 20.

179. 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, page 20.

180. 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.

181. 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.

182. 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.

183. 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.

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

185. 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.

186. 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.

187. 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.

188. 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.

189. 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.

190. 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.

191. 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.

192. 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.

193. 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.

194. Dr. Weber analyzed 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.

195. 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.

196. 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 Americans' choice was defeated by the candidate of non-African Americans' choice.

197. Dr. Weber analyzed six exogenous election contests for Mayor-President within the City of Baton Rouge (Defendants' Exhibit 1, pp. 54-59).

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

199. 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 American 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.

200. Dr. Weber analyzed six exogenous election contests for Mayor-President within City Court Election Section 2. Defendants' Exhibit 1, pp. 76-82.

201. 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.

202. Dr. Weber analyzed two exogenous election contests for Baton Rouge City Constable. Defendants' Exhibit 1, pp. 59-63.

203. 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.

204. Dr. Weber analyzed 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.

205. 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.

206. 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.

207. 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.

208. Dr. Weber analyzed 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.

209. 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.

210. 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.

211. Dr. Weber analyzed 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.

212. 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.

213. 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.

214. 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.

PROPOSED FINDINGS OF FACT AS TO ANGELE ROMIG

215. In her tenure with GCR, Inc., Angele Romig 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. Transcript, Vol. V at p. 7.

216. 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.

217. 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.

218. 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.

219. 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. Transcript Vol. V at p. 19; See also Defendants' Exhibit 1.2; See also Defendants' Exhibit 1.4

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

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

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

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

224. “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. Transcript Vol. V at p. 27; See also Defendants’ Exhibit 1.7, Bates number 271.

225. “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. Transcript Vol. V. at p. 27; See also Defendants’ Exhibit 1.8, Bates number 272.

226. “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. Transcript Vol. V. at p. 29; See also Defendants’ Exhibit 1.9, Bates numbers 273-275.

227. “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. Transcript Vol. V. at p. 29; Defendants’ Exhibit 1.10, Bates numbers 276-280.

228. “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. Transcript Vol. V at p. 30, Defendants’ Exhibit 1.11, Bates number 281.

229. “Exhibit J” to the report is a map containing the jurisdiction of East Baton Rouge Parish. Transcript Vol. V at p. 31, Defendants’ Exhibit 1.12, Bates number 282.

230. 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. Transcript Vol. V at p. 33.

231. “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. Transcript Vol. V at p. 35; Defendants’ Exhibit 1.13; Bates number 283.

232. From 1993-2014, 1,782 judicial incumbents ran for election. Of these 1,782 candidates, 1,702, or 95.5 percent, won re-election. Defendants’ Exhibit 1.2, p.7, Bates no. 802.

233. Seventy-seven percent of incumbent judicial 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). Defendants' Exhibit 1.2, p.8, Bates no. 803.

234. For the Baton Rouge City Court, during the period from October 16, 1993 through April 15, 2014, 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. No City Court incumbent judge lost re-election during this time period. Defendants' Exhibit 1.2, pp.8-9, Bates no. 803-804.

235. 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.

236. 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.

237. 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.

238. 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 50% of the vote in Baton Rouge City Court Section 2 exclusive of partial precincts. Defendants' Exhibit 1.2 at p. 19.

239. 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.

240. 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.

241. 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.

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

243. 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.

244. 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.

245. 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.

246. 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.

247. Based on the 2010 census data, the total population for Baton Rouge City Court Section 1 is 87,783. Defendants' Exhibit 1.2 at p. 31

248. Based on the 2010 census data, the total population for Baton Rouge City Court Section 2 is 141,615. Defendants' Exhibit 1.2 at p. 31

249. Based on the 2010 census data, the total voting age population for Baton Rouge City Court Section 1 is 66,826. Defendants' Exhibit 1.2 at p. 31

250. Based on the 2010 census data, the total voting age population in Baton Rouge City Court Section 2 is 111,098. Defendants' Exhibit 1.2 at p. 31.

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

252. 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

253. 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.

254. 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.

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

PROPOSED FINDINGS OF FACT AS TO MICHAEL BEYCHOK

256. 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. Transcript, Vol. 5, p. 80.

257. It is more difficult for judicial candidates to raise money for a judicial election. A Supreme Court rule does not allow judicial candidates to ask for money. Transcript Vol. 5, pp. 84-85.

258. Money, time, people and resources are important factors to consider in order to be successful in elections. Transcript Vol. 5, p. 85

259. How much money you can raise is a factor that affects the likelihood of a candidate being successful. Transcript Vol. 5, p. 87.

260. Strategy, message, how you deliver your message, and how you allocate resources are all factors that affect the likelihood of a candidate being successful. Transcript Vol. 5, p. 88.

261. It is more difficult for a candidate to raise money if the candidate is running against an incumbent. Transcript Vol. 5, pp. 92-93.

262. There are things that a candidate can do to compensate for the lack of funds available for a campaign. Transcript Vol. 5, pp. 93-94.

263. Beychok worked as a political consultant in Judge Alex "Brick" Wall's campaign for Baton Rouge City Court in 2012. He started working for Judge Wall 12-18 months previous to the election. Transcript, Vol. 5, pp.82.

264. Judge Brick Wall was an incumbent, and as an incumbent he had an advantage in the election against Joel Porter. Transcript Vol. 5, p. 94.

265. 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. Transcript Vol. 5, p. 94.

266. Joel Porter did not file a statement of organization with the Louisiana Board of Ethics. Transcript Vol. 5, p. 95.

267. Based on campaign finance reports, 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. Transcript Vol. 5, p. 95; See also Defendants' Exhibit 2, Bates number 285.

268. Mr. Porter had little time to equalize the name recognition gap that existed between himself and the incumbent Judge Wall. Defendants' Exhibit 2, Bates number 285.

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

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

271. Judge Wall raised and spent \$55,000.00 and Mr. Porter raised and spent just over \$20,000.00. Defendants' Exhibit 2, Bates number 286.

272. 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.

273. Judge Wall spent money on direct communication with voters through targeted mail pieces. Mr. Porter did not report any money spent on direct mail or communication with voters through paid means. Defendants' Exhibit 2, Bates number 286.

274. Judge Wall had a large advantage in money raised and spent the money more wisely than Mr. Porter. Defendants' Exhibit 2, Bates number 286.

275. Mr. Porter was disadvantaged by his lack of or his campaign's lack of effort. Defendants' Exhibit 2, Bates number 286.

276. Incumbent judges are defeated about 1 time out of 20. Defendants' Exhibit 2, Bates number 286

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

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

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

280. 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. Non African American voters held a 40,000 vote advantage over African American voters in the district in 2004. Defendants' Exhibit 2, Bates number 287.

281. 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

282. 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.

283. 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.

284. 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.

285. 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. Defendants' Exhibit 2, Bates number 288.

286. City Court election between Judge Suzan Ponder, Tiffany Foxworth, and Cliff Ivey

287. Judge Suzan Ponder was an incumbent, and as an incumbent she had an advantage in the election. Defendants' Exhibit 2, Bates number 288.

288. In the November 2012 election, Judge Ponder (who is white) received 44.84 percent of the vote, Tiffany Foxwork (who is black) received 43.16 percent of the vote and Cliff Ivey (who is white) received 12 percent of the vote. Defendants' Exhibit 2, Bates number 288.

289. Judge Ponder spent over \$80,000.00, on at least 6 mail pieces to voters. By contrast, Tiffany Foxworth spent less than \$10,000.00 for the City Court Judge position. But, she had spent over \$50,000.00 in the 2011 election for State Representative. Defendants' Exhibit 2, Bates number 288.

290. Ms. Foxworth had name recognition, a resource of human volunteers, and residual effects from her 2011 State Representative election. Defendants' Exhibit 2 Bates number 288 -289.

291. The November 2012 had high African American turnout, in part because President Barack Obama was on the ballot, which helped Ms. Foxworth despite the fact that she was outspent 8-1 by Judge Ponder. Defendants' Exhibit 2, Bates number 289.

292. 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.

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

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

295. In 1988, two African American candidates won over white candidates in an at-large election. Defendants' Exhibit 2, Bates number 290.

PROPOSED FINDINGS OF FACT AS TO BRUCE ADELSON

296. Mr. Adelson is an expert in the areas of civil rights, the Voting Rights Act, redistricting, election matters and allegations of discrimination. Transcript Vol. 5, pp. 209-210.

297. Judicial officers and their elections should be viewed differently than those of virtually all other publicly elected officials. Transcript Vol. 5, p. 218; Defendants' Exhibit 3, bates number 926.

298. Because one-person, one-vote does not apply to judicial elections, redistricting standards for judges are different. Transcript Vol. 5, pp. 219-220.

299. Judicial administration and overall caseload are examples of nondiscriminatory methods that states use to apportion state court judgeships. Transcript Vol. 5, p. 220.

300. Non-discriminatory methods 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.

301. The limited number of elections examined by Dr. Engstrom and the timeframe of those elections was not enough data to establish a pattern. Transcript Vol. 5, at pp. 221- 224.

302. Limiting voting analyses to one election cycle is problematic due to contextual factors that must be considered that could affect election outcome. Transcript Vol. 5, p. 232; 235-236.

303. By analyzing additional elections, 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; Transcript Vol. 5, p. 226.

304. Candidates of choice of African Americans in the City of Baton Rouge and in the Parish of Baton Rouge have had electoral success. Transcript Vol. 5, p. 226; Defendants' Exhibit 3, Bates numbers 926-927.

305. The 100% incumbent retention record for Baton Rouge City Court judges between 1993 and 2014, as reported in Angele Romig's report, is unprecedented. Defendants' Exhibit 3, Bates number 927; Transcript Vol. 5, p. 227.

306. 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. Transcript Vol. 5, pp. 227,228; Defendants' Exhibit 3, Bates number 927.

307. There are many contextual factors that can affect turnout and election results. Transcript Vol. 5, p. 232.

308. 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. Transcript Vol. 5, p. 225

309. Voters will consider whether a candidate for judge has been suspended, disbarred, reinstated, had ethical complaints adjudicated against them. Transcript Vol. 5, p. 228.

400. Suspension from the practice of law by an attorney running for judicial office would be substantively disqualifying for a candidate. Transcript Vol. 5, p. 231.

401. Experience is a factor that 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. Transcript Vol. 5, p. 231.

402. 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. VI at p. 229. These issues were contextual factors that significantly affected his ability to win a judicial election. Transcript Vol. 5, pp. 229, 252; See Defendants Exhibit 3, Bates number 934; See also Defendants' Exhibit 209-A.

403. In looking at the City Court election in which Tiffany Foxsworth 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. Transcript Vol. 5, pp. 253, 254.

404. In looking at the Supreme Court election of 2012 in which Judge Guidry was a candidate, he won in the City of Baton Rouge, the Parish of East Baton Rouge and in the area known as Election Section 2 of the City Court. Transcript Vol. 5, 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. Transcript Vol. 5, p. 255.

405. 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. Transcript Vol. 5, pp. 258-259.

406. The results of the four elections analyzed by Dr. Engstrom can be explained by reasons other than racial discrimination. Transcript Vol. 5, at p. 259.

407. The current Voting Age Population of Baton Rouge as reflected by the 2010 census is approximately 49.9 percent. Transcript Vol. 5, p. 234.

408. There are five sitting city court judges, and 40% of the judges are African American. Transcript Vol. 5, p. 234.

409. 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. Transcript Vol. 5, p. 234.

410. Exogenous elections should not be excluded from consideration for a vote dilution analyses when the endogenous elections occurred in one election cycle. Transcript Vol. 5, p. 236.

411. 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. Transcript Vol. 5, pp. 237-238; Defendants' Exhibit 3, Bates Numbers 929-930.

412. 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. Transcript Vol. 5, pp. 238-240; Defendants' Exhibit 3, Bates Number 930.

413. Black candidates do have an opportunity or have had an opportunity to elect their candidates of choice in the City of Baton Rouge. Transcript Vol. 5, p. 270.

414. Incumbency is a reasonable criteria for redistricting. Transcript Vol. 5, pp. 270, 271.

415. 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. Transcript Vol. 5, pp. 273-276.

PROPOSED CONCLUSIONS OF LAW

1. Section 2 of the Voting Rights Act specifically does not guarantee proportional representation.

2. The authority of the City-Parish Defendants with respect to the City Court of the City of Baton Rouge is governed by the Plan of Government of the Parish of East Baton Rouge and the City of Baton Rouge (Defendant's Exhibit 186)(hereafter the "Plan of Government"). Section 11.04 of the Plan of Government entitled "City Court and Judge" provides in pertinent part:

There shall continue to be a City Court of the City of Baton Rouge, which shall have jurisdiction over the territorial area of the City of Baton Rouge, as extended by this Plan of Government, and the provisions of the Louisiana Revised Statutes of 1950, as amended, shall continue in full force and effect except to the extent that they are in conflict with the provisions of this Section. The City Court shall be a court of record, and shall exercise such jurisdiction as may be conferred upon it by the Constitution and laws of the State of Louisiana. The City Court shall have but five Judges, unless the number be increased by a vote of two-thirds (2/3rds) of the members of the Metropolitan Council. The administrative Judge, elected annually, shall be the chief or presiding judge, subject to the rules adopted by the Court. Judges of the Court must be electors of the City of Baton Rouge, and have been admitted to the practice of law in Louisiana at least five (5) years prior to their selection. The Judges of the City Court shall be elected for terms of six (6) years.

(Defendants' Exhibit 186, pp. 42-43)

3. Section 11.09 of the Plan of Government provides the method for amendment of the Plan of Government, and provides in pertinent part:

Amendments to this Plan of Government may be proposed by majority vote of all the members elected to the Metropolitan Council or by a petition containing the full text of the proposed amendment signed by the qualified voters of East Baton Rouge Parish in number equal to ten percent of the number of votes cast for Sheriff at the last preceding election of Parish officers and filed in the office of the Council Administrator. A proposed amendment shall be admitted by the Council to the qualified voters of the parish at a special election to be called and held by the Council not less than sixty nor more than ninety days after the passage of the amendment by the Council or the filing of the petition.; provided, that if a state or congressional primary or election falls within the above period the special election may be held in connection with such primary election.

(Defendants' Exhibit 186, p.44)

4. The City-Parish Defendants cannot alter the current method of electing City Court Judges without amending the provisions of the Plan of Government, which requires approval by the voters of East Baton Rouge Parish.

5. The Plaintiffs have not proven that any request to amend the Plan of Government to alter the method of electing City Court judges has been made by anyone since a request was made in 1993, prior to the enactment of Act 609 of 1993.

6. The Plaintiffs have not proven that African American citizens formally or informally requested the Metropolitan Council to amend the Plan of Government to restructure the Baton Rouge City Court Elections Sections.

7. The Plaintiffs have not proven that African American citizens appeared before the Metro-Council on December 12, 2012 requesting that they approve and adopt a resolution amending Act 609 to change the subdistrict lines and provide a minority-majority subdistrict electing three judges and a majority-majority subdistrict electing two judges.

8. The Plaintiffs' claims against the City-Parish Defendants shall be dismissed with prejudice.

9. For Plaintiffs to prevail with their allegation that the districting system for electing Baton Rouge City Court judges violates Section 2 of The Voting Rights Act by illegally diluting voting strength of African Americans, plaintiffs must establish three "necessary preconditions" as described by the United States Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986). These three *Gingles* preconditions are: "[t]he minority group must demonstrate that: (1) it is sufficiently large and geographically compact to constitute a majority in a 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." *Sensley v. Albritton*, 385 F.3d 591, 595 (5th Cir. 2004).

10. Plaintiffs must prove each of these preconditions by a preponderance of the evidence. *League of United Latin American Citizens #4552 (LULAC) v. Roscoe Independent School District*, 123 F.3d 843, 846 (5th Cir. 1997). Failure to prove any one of these elements defeats a Section 2 claim. *Sensley, supra*, 385 F.3d at 595.

11. 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).

12. The Plaintiffs failed to meet their burden of proof with regard to the first prong of *Gingles*. The Plaintiffs retained Nancy Jensen to propose a hypothetical redistricting scheme. Plaintiffs' Exhibit 62. Jensen's report, testimony, and proposed redistricting plan are all fatally flawed.

13. Jensen developed a plan where race was the predominant factor among her redistricting principles, and which unnecessarily “packed” African American voters into majority African American districts in the City of Baton Rouge, a jurisdiction where African American candidates have enjoyed electoral success even when running against white candidates in districts that were majority non-African American. See *Gingles*, 478 U.S. at 46 n. 11, 106 S.Ct. at 2764 n. 11, citing Engstrom & Wildgren, *Pruning Thorns from the Thicket: An Empirical Test of the Existence of Racial Gerrymandering*, 2 *Legis.Stud.Q.* 465, 465–66 (1977) (dilution may be caused by dispersal or by excessive concentration of minority voters); *Ketchum v. Byrne*, 740 F.2d 1398, at 1408 n. 7 (7th Cir. 1984) (“packing”—wasting of voting strength—may be evidenced by majorities greater than 65–70%); *Hastetr v. State Board of Elections*, 777 F.Supp. 634, at 646 (D.C.N. Ill.E.D. 1991) (packing wastes minority voting power and reduces minority influence in other districts). See elections of Judges Freddie Pitcher, Curtis Calloway and Ralph Tyson to the Baton Rouge City Court, the 2004; 2008 and 2012 elections of Mayor-President Holden, and the 2000 election of City Constable, and election results for the 2012 Louisiana Supreme Court election in the City of Baton Rouge and Baton Rouge City Court Election Section 2.

14. 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.

15. 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.

Jensen’s report contains no such functional analysis.

16. 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 disfavored single member districts in judicial

redistricting. See: *League of United Latin Amer. Citizens v. Clements*, 999 F. 2d 831 (5th Cir. 1993) and *Cousin v. Sundquist*, 145 F.3d 818, 822 (6th Cir. 1998).

17. It is 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). 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).

18. The most troubling aspect of Jensen's proposed plan is her unabashed use of race as the predominant factor, indeed the only factor, in creating an illustrative district to remedy Plaintiffs' allegation that the new majority African-American population in the City of Baton Rouge 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.: *Grove v. Emison*, 507 U.S. 25 (1993).

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

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

21. 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 necessarily leads to the conclusion that Jensen's use of race in her proposed City Court plan predominated over legitimate districting considerations. Therefore the Plaintiffs have failed to prove the first prong of *Gingles*.

22. Both Plaintiffs' expert Dr. Engstrom and Defendants' expert Dr. Weber found that African American voters in the City of Baton Rouge were cohesive, although there was some dispute over the varying degrees of cohesion among non-African American voters. Nevertheless, the second prong of *Gingles* requires only that the court find that African American voters are cohesive, and based on the reports and testimony of Dr. Engstrom and Dr. Weber, the Court finds that Plaintiffs' have satisfied the second prong of *Gingles*.

23. 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).

24. “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).

25. “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).

26. 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).

27. In *Gretna*, African Americans candidates for alderman in Gretna had run for election only three times, in 1973, 1977, and 1979. In addition, Gretna’s “black voter turnout was 22 percent lower than white voter turnout in 1981, and 26 percent lower in 1977.” *Citizens for a Better Gretna, supra*, 834 F.2d at 504, note 3. By contrast, in the case at bar, African-American voter turnout in the City of Baton Rouge was higher than white turnout in the 2008 primary and runoff elections and in the November 2012 primary election, and only 2.6 percentage point lower than white turn out in the December 2012 runoff. Defendants’ Exhibit 1, pp. 25-26, Table 4.

28. In *Gretna* election data for endogenous were available only for the 1977 and 1979 elections. *Id* at 502. To compensate for the “sparsity” of data, the court in *Gretna* looked to exogenous elections in 1979 and 1984. In the present case, the three endogenous election contests that the Plaintiffs’ expert examined occurred over one election cycle in 2012 within a period of 32 days in 2012. The endogenous election data in the current case is more “sparse” than in *Gretna*, and requires the Court to look beyond endogenous elections to exogenous elections.

29. The Plaintiffs’ expert’s examination of exogenous elections was limited to four elections contests, all of which appeared on the same ballots the endogenous election contests the Plaintiffs’ expert analyzed. Plaintiffs’ expert examined these exogenous elections with the City of Baton Rouge, yet ignored the many other exogenous elections between African American and white candidates in the City of Baton Rouge, including the Mayor-President and Presidential elections that appeared on the same primary election ballot as the endogenous and exogenous elections examined by Plaintiffs’ expert. Based on the analysis by Dr. Weber of the November 2012 mayoral and Presidential elections, the candidates of African Americans’ choice in both elections, i.e., Mayor-President Holden and President Obama, were also the preferred candidates of the majority of the voters in the City of Baton Rouge and Baton Rouge City Court Election Section 2. Including these 2 exogenous elections in the analysis of racially polarized voting and

vote dilution, in addition to the elections analyzed by Dr. Engstrom, results in the following finding:

30. In the primary election on November 2012, the candidate of African Americans' choice was defeated in one election contest (Joel Porter versus Alex Wall); the candidate of African Americans' choice advanced to the run-off in three election contests (Tiffany Foxworth versus Suzan Ponder; Gideon Carter versus Michael MacDonald; and John Michael Guidry versus Jeff Hughes); and the candidates of African Americans choice were successful in two elections (President Obama and Mayor- President Holden. In those elections which advanced to a December 8, runoff, the candidate of African Americans' choice was the overall vote getter in the City of Baton Rouge and Baton Rouge City Court Election Section 2 in one of three election contests (Judge Guidry v. Judge Hughes). These results are not sufficient to satisfy the third prong of *Gingles*.

31. Where, as here, 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."

32. 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.

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, 106 S.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).

33. 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."

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

34. 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.

35. 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. 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.

36. 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.

37. 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.

38. 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 appellate 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.

39. However, Plaintiffs omit critical information in their citation to this case. The district court and the Fifth Circuit rejected plaintiffs’ claim that Mississippi’s method for electing Supreme Court judges violated Section 2. 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 in Magnolia Bar Association, 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, note 3.

40. The 1991 election of Justice Banks in the Magnolia Bar Association case 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 found that Justice Banks’ election, together with Justice Anderson’s election, demonstrated 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 and City Court Election Section 2. While Judge Guidry was not successful in the jurisdiction of the Supreme Court as a whole, this election, when analyzed in the City of Baton Rouge and Baton Rouge City Court Election Section 2, does not demonstrate that white voters in the City of Baton Rouge and Election Section 2 voted as a bloc to usually defeat the preferred candidate of African Americans.

41. With the exception of Judge Guidry's election, 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. See Defendants' Exhibit 1.2. Ms. Romig reported that from 1993-2014, 1,782 judicial incumbents, ran for election. Of these 1,782 candidates, 1,702, or 95.5 percent, won re-election. 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). 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. 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. In analyzing and reviewing the City Court election results, Ms. Romig reported that no City Court incumbent judge lost re-election. . Defendants' Exhibit 1.2 at p. 10

42. 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.

43. 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, p. 26, paragraph 71. 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, p. 23, paragraph 60.

44. Election results from Baton Rouge City Court Election Section 2, not including partial precincts, reveal that Judge Guidry received 14,476 votes or thirty-three percent, more than 6000 more than his nearest competitor, democrat Mary Olive Pierson. In the results in Election

Section 2 including partial precincts, Judge Guidry received nearly 7500 more votes than his nearest competitor, Ms. Pierson.

45. In a runoff on December 8, 2012 between Judge Guidry and Jeff Hughes, a white candidate who was also an appellate judge, Judge Guidry again prevailed in East Baton Rouge Parish, in the City of Baton Rouge and in City Court Election 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, p. 87.

46. Although Hughes won the runoff and was elected to the Louisiana Supreme Court, Judge Guidry received more votes than Hughes in the City of Baton Rouge and Election Section 2, where white voters did not vote as a bloc to prevent his election.

47. The results of Judge Guidry's election in the City of Baton Rouge 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 cross-over 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, was evidence that the existing Mississippi Supreme Court election system did not violate Section 2 of the Voting Rights Act.

48. On November 6, 2012, some Baton Rouge voters participated in an election for the First Circuit Court of Appeal District 2, Subdistrict 1, Division B. The jurisdictional lines of the Court of Appeal district do not align with the Baton Rouge City Court, according to the Plaintiffs' and Defendants' experts and Ms. Romig's report. In the primary, African American candidates Judge Trudy White and Gideon Carter combined to receive more total votes than incumbent Judge Michael MacDonald.

49. In the November 2012 primary, there were 3 candidates – African American Judge Trudy White, African American attorney Gideon Carter, 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. In the primary, African American candidates Judge Trudy White and Gideon Carter combined to receive more total votes than incumbent Judge Michael MacDonald, but the African American votes were split among Judge White and Mr. Carter. Judge White contributed her failure to garner additional votes was because she ran as a Republican. The incumbent Judge MacDonald also ran as an incumbent.

50. 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. In this runoff,

whites in the City of Baton Rouge and Election Section 2 did vote as a block to defeat the candidate of African Americans choice

51. 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, incumbent Baton Rouge City Court Judge Wall was re-elected.

52. 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." In 2006, the Louisiana Supreme Court suspended Joel Porter from the practice of law for one year.

53. 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.

54. Defendants produced uncontradicted expert testimony that these ethical considerations may well have 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 on the same election day.

55. 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."

56. The "circumstances underlying unfavorable election returns" and a "functional view of the political process" concerning the 2012 City Court 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 electoral success. Despite the attempts by Plaintiffs' fact witnesses to dismiss the election of Judges Pitcher and Calloway and the late Judge Tyson, the undisputed facts are that all three judges were elected to the Baton Rouge City Court against at-large from the City of Baton Rouge against white opponents at a time when the City of Baton Rouge was majority white in population, voting age populations and voter registration. Additionally, the undisputed testimony of Defendants' expert Dr. Weber demonstrates that both within the City of baton Rouge and within the boundaries of Election Section 2, African American candidates competing against white candidates for the

office of President, Mayor-President, City Constable, and Supreme Court judge have been successful despite the existence of African American voter cohesion and racially polarized voting. Such electoral success also 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 results of elections contests from two 2012 election dates separated by 32 days to prove that the existing City Court election system discriminates against African-American voters. Plaintiffs have failed to meet their burden of proof with regard to the third *Gingles* precondition, i.e., that 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.

57. Despite the Court having determined that the Plaintiffs have failed to satisfy the first and third prong of *Gingles*, the Court will address the “totality of the circumstances”.

58. After proving the existence of the three *Gingles* preconditions, plaintiffs must then prove that, “based on the totality of the circumstances, they [minority voters] have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Sensley*, 385 F.3d at 595.

59. When evaluating the totality of the circumstances, courts are guided by nine factors, also known as the Senate factors, *Thornburg v. Gingles*, 478 U.S. at 36-38, *Teague v. Attala County, Mississippi*, 92 F.3d 283, 292-93 (5th Cir. 1996):

1. The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
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 unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. If there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. Whether political campaigns have been characterized by overt or subtle racial appeals;
7. The extent to which members of the minority group have been elected to public office in the jurisdiction;
8. Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; and
9. Whether the policy underlying the state or political subdivision’s use of such voting qualification, prerequisite to voting, or standard, practice, or procedure is tenuous.

60. 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).

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

...unless 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.

62. 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.

63. 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 Senate 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).

64. 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.*

65. 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.

66. 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.

67. 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).

68. *The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process.*

The Plaintiffs presented evidence of history of official discrimination in the state or political subdivision in the form of testimony and a report prepared by Dr. Raphael Cassimere. The Plaintiffs’ did not, however, present evidence that this history of official discrimination continues to affect the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process. Based on the unrefuted testimony and report of Dr. Weber on African American voter registration and participation, the Court finds that African American voters are registered to vote and participate in elections at the same rates as whites, and in some instances, at higher rates. Defendants’ Exhibit 1, Tables 1-9.

69. *The extent to which voting in the elections of the state or political subdivision is racially polarized.*

The Plaintiffs’ did not present any evidence as to whether elections in the State of Louisiana are racially polarized other than those judicial elections analyzed by Plaintiffs’ expert for Baton Rouge City Court, First Circuit Court of Appeal and Louisiana Supreme Court. None of the elections analyzed by the Plaintiffs’ expert were statewide elections; the First Circuit and Louisiana Supreme Court election were conducted in a jurisdiction beyond the City of Baton Rouge, but no analysis was provided of the elections outside of the City of Baton Rouge.

70. With regard to racially polarized voting within the jurisdiction, the Plaintiffs’ expert concluded that there was polarized voting in all of the elections he analyzed, and that this resulted in vote dilution. The Defendants’ expert found racially polarized voting in elections for President, Mayor-President, City Constable, Supreme Court, Court of Appeal and City Court elections, but determined that it did not result in vote dilution in the majority of the elections he analyzed.

71. *The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group.*

The voting practice which is at issue was the result of Act 609 passed by the Louisiana Legislature in 1993. The sponsor of the legislation, Judge John Michael Guidry, and Ernest Johnson, the President of the NAACP and lead counsel in the *Clark v. Edwards* litigation, both testified that African Americans were in favor Act 609 at the time it was enacted. There was no evidence that majority vote requirements, anti-single shot provisions, or other practices or

procedures in Act 609 enhance the opportunity for discrimination against African American voters.

72. *If there is a candidate slating process, whether the members of the minority group have been denied access to that process.*

There was no evidence presented of any candidate slating process.

73. *The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process.*

There was testimony presented by Dr. Bernard Taylor, Superintendent of East Baton Rouge Parish School, about the effects of discrimination upon public education. There was also testimony regarding the inability of African American candidates to raise campaign funds due to the socioeconomic condition of minorities and testimony from Dr. Cassimere regarding possible difficulties of some African American voters registering to vote or voting. Based on the unrefuted testimony and report of Dr. Weber on African American voter registration and participation, the Court finds that any effects of discrimination African Americans bear in such areas as education, employment and health have not hindered their ability to register to vote or to participate in the political process in the City of Baton Rouge. See Defendants' Exhibit 1, Tables 1-9.

74. *Whether political campaigns have been characterized by overt or subtle racial appeals.*

There was testimony by Judge John Michael Guidry regarding overt and subtle racial appeals in the December 2012 runoff election in the Louisiana Supreme Court, and that testimony was uncontroverted. There was also testimony by Tiffany Foxworth that racial appeals were used in the election for Baton Rouge City Court in 2012. Ms. Foxworth's testimony was contradicted by the testimony of Plaintiff-Intervenor Byron Sharper, who testified that he worked on the campaigns of Joel Porter and Tiffany Foxworth for Baton Rouge City Court, but he did not encounter any racial appeals from any candidates in any race he worked in. Transcript, Vol. I, pp.109, 114. Judge Trudy White also testified that she had no knowledge of racial appeals on behalf of any of the defendants in the case, including officials with the State of Louisiana, any officials with Parish of East Baton Rouge, or and officials with the City of Baton Rouge. Transcript, Vol. I, p. 276.

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

The Court has addressed the election of African Americans to public office in the City of Baton Rouge in its discussion of the third prong of *Gingles*. African American candidates have been successful in the City of Baton Rouge for the office of Mayor-President and City Constable even before the City of Baton Rouge became majority African American in population and voter registration. African Americans were elected to the Baton Rouge City Court under the at-large

election scheme when the City of baton Rouge was majority white in population, voting age population and voter registration.

76. *Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.*

There was no evidence presented by the Plaintiffs of a lack of responsiveness of elected officials other than the failure of the Louisiana Legislature to pass legislation with regard to the Election Sections of the of the Baton Rouge City Court .

77. *Whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice, or procedure is tenuous.*

There was no evidence presented by the Plaintiffs that the creation or continued use of Election Sections for the election of Baton Rouge City Court judges is tenuous.

78. Plaintiffs have failed to 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.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Proposed Findings of Fact and Conclusions of Law have been filed electronically on behalf of Defendants, the City of Baton Rouge, Parish of East Baton Rouge, and Mayor-President Melvin L. “Kip” Holden, with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to counsel for plaintiff, Kenneth Hall, and counsel of record for Plaintiff-Intervenor, Byron Sharper, by operation of the Court’s electronic filing system. I also certify that notice of this filing will be sent to all other parties by operation of the Court’s electronic filing system.

Baton Rouge, Louisiana this 10th day of December, 2014.

CHRISTINA B. PECK