

NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE  
("NAACP") LOUISIANA STATE  
CONFERENCE, POWER COALITION FOR  
EQUITY AND JUSTICE, DOROTHY  
NAIRNE, EDWIN RENE SOULE, ALICE  
WASHINGTON, AND CLEE EARNEST  
LOWE,

Plaintiffs,

v.

R. KYLE ARDOIN, in his official capacity as  
Louisiana Secretary of State,

Defendant.

Civil Action No. C-716837

Div.: C

Sec.: 25

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED JUDGMENTS ON  
BEHALF OF PLAINTIFFS NATIONAL ASSOCIATION FOR THE ADVANCEMENT  
OF COLORED PEOPLE ("NAACP") LOUISIANA STATE CONFERENCE, POWER  
COALITION FOR EQUITY AND JUSTICE, DOROTHY NAIRNE, EDWIN RENE  
SOULE, ALICE WASHINGTON, AND CLEE EARNEST LOWE**

MAY IT PLEASE THE COURT:

Plaintiffs Louisiana State Conference of the NAACP ("Louisiana NAACP"), Power Coalition for Equity and Justice ("Power Coalition"), Dorothy Nairne, Edwin René Soulé, Alice Washington, and Clee Earnest Lowe (together, the "individual plaintiffs"), by and through their undersigned counsel, respectfully submit the following proposed findings of fact and conclusions of law in support of their memorandum in opposition to the declinatory, dilatory, and preemptory exceptions filed by Defendant Secretary of State R. Kyle Ardoin (the "Secretary").

## FINDINGS OF FACT

### A. The Census.

1. To apportion congressional representatives among the States, the Constitution requires an “Enumeration” of the population every 10 years, to be made “in such Manner” as Congress “shall by Law direct,” U.S. Const. art. I, § 2, cl. 3; U.S. Const. Amdt. XIV, § 2. Congress then delegated to the Secretary of Commerce the task of conducting the decennial census “in such form and content as he may determine.” 13 U. S. C. § 141(a).

2. In 2020, the U.S. Census Bureau, a statistical agency within the Department of Commerce, conducted the decennial census required by Article I, Section 2. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 census to the President. As a result of the 2020 census, Louisiana was apportioned six congressional districts, the same number of congressional districts the state was apportioned in 2010, until the next U.S. census in 2030.

3. According to the 2020 census count, Louisiana’s resident population has grown to 4,657,757, an increase of nearly 125,000 people since 2010. NAACP Memo. Opp. 3-4. Population growth has been uneven across Louisiana’s existing congressional districts since the last U.S. Census. *Id.* at 4. The 2020 Census data evidenced population shifts since 2010 which resulted in the underpopulation of Louisiana Congressional Districts 2, 4, and 5 and the overpopulation of Louisiana Congressional Districts 1, 3, and 6. *Id.* Currently, the maximum population deviation between Louisiana’s Congressional districts is 11 percent. *Id.* This corresponds to a population deviation among the current congressional districts of 88,120 people. *Id.*

### B. The 2020 Redistricting Cycle in Louisiana.

4. In Louisiana, congressional redistricting is accomplished through ordinary legislation—through a bill introduced during a legislative session, reported by a committee after a public hearing, and passed by majority vote of each chamber. See La. Const. Art. III, § 15; *see Smiley v. Holm*, 285 U.S. 355, 367 (1932) (“[T]he exercise of the authority must be in accordance with the method which the state has prescribed for legislative enactments.”).

5. The redistricting process in Louisiana began in June of 2021 with the issuance of guidance governing the criteria to be used in developing redistricting plans for Congress and other levels of government for which the State Legislature is responsible. The guidance, embodied in Joint Rule 21 of the Louisiana Legislature, requires that each redistricting plan submitted for consideration by the Legislature comply with the Equal Protection Clause of the Fourteenth

Amendment and the Fifteenth Amendment to the U.S. Constitution; Section 2 of the Voting Rights Act of 1965, as amended; and all other applicable federal and state laws.

6. From late October 2021 through January 2022, the Louisiana House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs held a series of joint public meetings (commonly called “roadshows”) across the State during which Louisianans could make suggestions and recommendations regarding the redistricting process and the new maps.

7. Following the conclusion of the roadshows, the Legislature convened the Special Session to consider redistricting proposals and enact a plan. The first congressional maps were pre-filed by legislators on January 31, 2022, in advance of the Special Session.

8. House Bill 1 was introduced by Speaker Schexnayder on February 1, 2022, setting forth a proposed congressional redistricting plan creating a single majority-Black congressional district in Louisiana’s six district map, and was reported favorably by the House Committee on House and Governmental Affairs on February 4, 2022.

9. Senate Bill 5 was introduced by Senator Sharon Hewitt on February 1, 2022, setting forth a proposed congressional redistricting plan creating a single majority-Black congressional district in Louisiana’s six district map, and was reported favorably by the Senate Committee on Senate and Governmental Affairs on February 4, 2022.

10. On February 18, 2022, the Legislature passed both H.B. 1 and S.B. 5, bills adopting a proposed Louisiana Congressional redistricting plan creating a single majority-Black Congressional district within the six-district map. The Louisiana House of Representatives voted 62-27 in favor of H.B. 1 and 64-31 in favor of S.B. 5. The Louisiana Senate voted 27-10 to approve H.B. 1 and 26-9 to approve S.B. 5.

11. On March 9, Governor John Bel Edwards vetoed both H.B. 1 and S.B. 5, stating that the map “is not fair to the people of Louisiana and does not meet the standards set forth in the federal Voting Rights Act.” Governor Edwards’ veto statement explained that in failing to enact a congressional map that complies with the Voting Rights Act, the Legislature “disregarded the shifting demographics of the state” particularly the increase in the Black voting age population by 4.4% since the 2010 census, resulting in a 2020 Black voting age population of 31.2%, almost one third of the state of Louisiana. The Governor made clear that he will veto proposed maps that do

not comply with Section 2, telling Louisiana legislators that “[t]his injustice cannot continue.” NAACP Memo. Opp. 5.

12. The 2022 Regular Legislative Session convened on March 14, 2022, and may be ongoing through June 6, 2022. La. Const. Art. III, § 2(A)(3)(a).

13. Louisiana holds its congressional primary election on the first Tuesday in November—November 8, 2022, this year. La. R.S. 18:1272(A). Accordingly, the following deadlines are rapidly approaching related to the open Congressional primary:

- a. Qualifying period for candidates: July 20 to July 22, 2022
- b. Deadline to register to vote in-person, by mail, or at a DMV location: October 11, 2022
- c. Deadline to register to vote online: October 18, 2022
- d. Early voting period: October 25, 2022, to November 1, 2022
- e. Deadline to request a mail ballot (except Military and Overseas voters): November 4, 2022
- f. Deadline for Registrar to receive voted mail ballot (except Military and Overseas voters): November 7, 2022
- g. Open Primary Election Day: November 8, 2022.<sup>1</sup>

### **C. The Lawsuits.**

14. On March 15, 2022, Plaintiffs brought this action asking the Secretary of State and requested this Court to “[d]eclare that the current configuration of Louisiana’s congressional districts under La. Rev. Stat. 18:1276.1 violates Article I, Section 2 of the U.S. Constitution” and “[e]nter preliminary and permanent injunctions requiring the State to conduct the 2022 congressional election in accordance with a redistricting map that complies with the U.S. Constitution and Section 2 of the Voting Rights Act.” Petition for Declaratory and Injunctive Relief at 21 (“NAACP Pet.”). The Secretary thereafter filed his Declinatory, Dilatory, and Peremptory Exceptions on March 22, 2022, advancing several procedural and substantive objections.

### **D. The Parties.**

15. Plaintiff Louisiana NAACP is a nonprofit and nonpartisan organization and a State Conference of the National Association for the Advancement of Colored People. NAACP Pet. ¶ 12. The Louisiana NAACP’s work is devoted to pursuing the social, political, economic, and

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<sup>1</sup> See La. Secretary of State, 2022 Election Dates Calendar, <https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/ElectionsCalendar2022.pdf>.

educational equity of Black people in this state and nation. *Id.* The Louisiana NAACP's mission includes eliminating racial discrimination and uplifting the protection of voting rights and fair political participation. *Id.* As a nonprofit, the Louisiana NAACP depends entirely on the work of volunteers, supported by membership fees and private donors.

16. The Louisiana NAACP has approximately 5,000 members throughout Louisiana who are registered voters, including in Louisiana Congressional Districts 1, 3, and 6. *Id.* ¶14. The Louisiana NAACP has 40 branches comprising adult members and 16 youth and college chapters across the state. *Id.* The Louisiana NAACP has active chapters in all three of Louisiana's currently overpopulated Congressional districts, including: St. Bernard (Congressional District 1); Lafayette (Congressional District 3); and Baton Rouge (Congressional District 6). *Id.* ¶15.

17. Plaintiff Power Coalition is a nonpartisan, nonprofit statewide civic engagement table in Louisiana that works to build grassroots power, advocate for community-centered policies, and increase voter participation. NAACP Pet. ¶¶16-17. The Power Coalition brings together community-based organizations that work together to educate and empower voters across Louisiana through community organizing and voter engagement initiatives. *Id.*

18. In 2016, the Power Coalition mobilized a statewide campaign to reach more than 30,000 infrequent voters of color in Jefferson, Orleans, Calcasieu, Terrebonne, East Baton Rouge, Ouachita, Caddo, and Bossier parishes. *Id.* In 2018, the Power Coalition played a leading role in the Unanimous Jury Coalition, a successful statewide campaign to pass an amendment ending the use of non-unanimous juries in Louisiana. *Id.* In 2019, the Power Coalition made over 1.3 million voter contact attempts to over 465,000 infrequent and semi-frequent voters of color across Louisiana, approximately 60 percent of whom turned out to vote in the statewide elections. *Id.* If a lawful districting plan is not put in place, the Power Coalition will be required to divert resources away from these essential efforts to combat the impacts of discriminatory districts. *Id.*

19. The current absence of a constitutionally and legally compliant redistricting plan resulting from Louisiana's impasse also irreparably harms the Louisiana NAACP and the Power Coalition, because they engage in accountability and voter education efforts that are hindered in at least the following ways by the lack of a valid congressional plan. NAACP Pet. ¶18.

20. Their members and constituents who desire to influence the views of their representatives in Congress or candidates for Congress are not able to communicate their concerns

effectively because current members of the Congress or congressional candidates may no longer represent those citizens in the next election. *Id.* ¶19.

21. Potential candidates for Congress will not be able to come forward, and Louisiana NAACP's and the Power Coalition's members will therefore not be able to understand the policy platforms those candidates advance, until potential candidates know the borders of the districts in which they, as residents of the district, could seek office. *Id.* ¶20.

22. Louisiana NAACP and Power Coalition's members and constituents who desire to communicate with and contribute financially to candidates for Congress who will represent them are hindered from doing so until districts are correctly apportioned *Id.* ¶21.

23. Plaintiff Dr. Dorothy Nairne resides in Assumption Parish, Louisiana. NAACP Pet.¶22. She is an African-American, a U.S. citizen, and lawfully registered to vote. *Id.* Nairne is a regular voter. *Id.* She resides in CD 6, which, as a result of the failure to adopt a new congressional redistricting plan, is overpopulated relative to the constitutional requirement of districts of equal population. *Id.* Dr. Nairne is a dues-paying member of the Assumption Parish Branch of the NAACP. *Id.*

24. Plaintiff Bishop Edwin René Soulé resides in Hammond, Louisiana. *Id.*¶23 He is an African-American, a U.S. citizen, and lawfully registered to vote. *Id.* Soulé is a regular voter. *Id.* He resides in CD 1, which, as a result of the failure to adopt a new congressional redistricting plan, is overpopulated relative to the constitutional requirement of districts of equal population. *Id.*

25. Plaintiff Dr. Alice Washington resides in Baton Rouge, Louisiana. *Id.* ¶24. She is an African-American, a U.S. citizen, and lawfully registered to vote. *Id.* Washington is a regular voter. *Id.* She resides in CD 6, which, as a result of the failure to adopt a new congressional redistricting plan, is overpopulated relative to the constitutional requirement of districts of equal population. *Id.*

26. Plaintiff Rev. Clee Earnest Lowe resides in Baton Rouge, Louisiana. NAACP Pet. ¶25. He is an African-American, a U.S. citizen, and lawfully registered to vote. *Id.* Lowe is a regular voter. *Id.* He resides in CD 6, which, as a result of the failure to adopt a new congressional redistricting plan, is overpopulated relative to the constitutional requirement of districts of equal population. *Id.*

27. The Defendant in this lawsuit is the Secretary of State of Louisiana, Kyle Ardoin

(“the Secretary”). The Secretary’s role in Louisiana is “the chief election officer of the state.” LA Const. art. 4, § 7; La. R.S. 18:421.

28. The Secretary is responsible for preparing and certifying the ballots for all elections, including elections for the U.S. House of Representatives, certifying all election returns, and administering the election laws. *Id.* The Secretary of State also qualifies candidates for the U.S. House of Representatives. *Id.*; La. R.S. 18:452, 18:462.

**E. Louisiana’s Existing Congressional Plan is Malapportioned.**

29. In Louisiana, when a new districting plan is adopted, it has the effect of repealing or superseding any prior districting plan in effect for the same unit of government (relevant here, Louisiana’s congressional districts). *See, e.g.*, 2011 La. Sess. Law Serv. 1st Ex. Sess. Act 2 (H.B. 6) (repealing previous congressional districts). If no plan is adopted, the prior plan remains statutorily in force until it is repealed or amended through the legislative process. The congressional districts in Louisiana law were drawn after the 2010 census. *See id.*; *see also* La. Stat. Ann. § 18:1276.1.

30. The Parties agree that “the Constitution and laws command that the state redistrict for the 2022 elections” and that using the 2011 districts for the 2022 elections is not even “legally possible.” Defs. Exceptions Mem. 7. The Secretary also acknowledges, “The State is Barred from Using 2011 Districts for the 2022 Congressional Elections.” *Id.*

**F. Louisiana’s Governor and Legislature Have Reached an Impasse with Respect to the 2020 Congressional Redistricting Process.**

31. The Louisiana Constitution requires “two-thirds of the elected members of each house” to override a gubernatorial veto of duly passed legislation. La. Const. Art. 3 § 18(c). Neither H.B. 1 nor S.B. 5 passed with more than 70 votes in the House, the number of votes required for the Legislature to override Governor Edwards’ veto. Veto override votes are extremely rare in Louisiana. The last successful veto override occurred in 1993, and state law makes it difficult to convene a veto session during a Regular Session of the Louisiana Legislature, which is currently ongoing.

32. Several bills proposing new congressional districts have been introduced and referred to committees, although no vote has yet occurred and no map creates two majority-Black congressional districts. *See* Senate Bill 306, House Bill 712, and HB 608 of the 2022 Regular Session.

33. There is little likelihood that the impasse can be resolved. Legislative leaders have made clear that the Legislature will not adopt a Congressional map that will comply with the Governor’s stated requirements. And following the veto, the Legislative leaders immediately started the process of attempting to enact maps exactly like those vetoed by the Governor. The prefiled bills during the Regular Session are identical to the ones vetoed by the Governor during the Special Session.

#### **G. The Governing Law.**

34. Article I, Section 2 of the U.S. Constitution requires that congressional districts “achieve population equality as nearly as is practicable.” *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (internal quotation marks omitted).

35. The Elections Clause of the U.S. Constitution—which confers power to the State over federal elections— leaves the “Times, Places and Manner of holding Elections for Senators and Representatives” to be “prescribed in each State *by the Legislature* thereof.” U.S. Const. art. I, §4, cl. 1 (emphasis added); Defs. Exceptions Mem. 9–10. The Election Clause does not render congressional district plans immune from challenge under federal law. Under the plain text of the clause, the power of the Legislature is subject to restrictions imposed by federal statute. *See* U.S. Const. art. I, §4, cl. 1 (specifying that “the Congress may at any time by Law make or alter such [federal election] Regulations”). This is confirmed by the Supreme Court’s Elections Clause cases which have long “reflect[ed] the [] understanding” that the Clause is “not [] a source of power . . . to evade important *constitutional* restraints.” *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 834-35 (1995) (emphasis added). A unanimous Supreme Court has recognized that “requir[ing] valid reapportionment” and “formulat[ing] a valid redistricting plan” are within the “power of the judiciary of a State.” 507 U.S. at 33 (quoting *Scott*, 381 U.S. at 409); *see also Wesberry*, 376 U.S. at 6. The state courts are even “specifically encouraged” to formulate valid redistricting plans when political branches fail to do so. *Scott*, 381 U.S. at 409 (emphasis added).

36. In *Wesberry v. Sanders*, the Supreme Court of the United States explained that Article 1, Section 2’s requirement that members of Congress be chosen “by the People of the several States” requires “that when qualified voters elect members of Congress each vote be given as much weight as any other vote.” 376 U.S. 1, 7 (1964). The Supreme Court has long held that this command means that “as nearly as is practicable[,] one [person]’s vote in a congressional election is to be worth as much as another’s.” *Wesberry*, 376 U.S. at 8. Simply put, the U.S.



Constitution requires virtually identically sized congressional districts. *Karcher*, 462 U.S. at 730. Any deviation from absolute population equality, no matter how small, dilutes equality of access to representation and must be justified by the state. *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969) (concluding that Article I, Section 2 “permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown”); *Karcher*, 462 U.S. at 734 (“[T]here are no *de minimis* population variations, which could practicably be avoided, but which nonetheless meet the standard of Art. I, § 2 without justification.”). For example, in *Karcher*, the Supreme Court struck down a district plan in which each district’s population differed from perfect equality, on average, by 0.1384%, and the difference between the largest and smallest districts was 0.6984% of the average district. *Id.* at 744; *see also Vieth v. Pennsylvania*, 195 F. Supp. 2d 672, 675 (M.D. Pa. 2002) (striking down as malapportioned a plan in which the most populated and least populated districts differed by nineteen people); *Hastert v. State Bd. of Elections*, 777 F. Supp. 634, 662 (N.D. Ill. 1991) (declining to implement a plan that, among other things, had a total deviation from perfect equality of 0.00297%).

37. Absent population equality or a justification for any deviation between congressional districts, a state’s Congressional districts are malapportioned in violation of the U.S. Constitution.

38. Louisiana law provides that the state “*shall* be divided into six congressional districts,” and that those “districts *shall* be composed as follows.” La. R.S. 18:1276.1 (emphasis added). The statute then describes the composition of the six districts as enacted in the 2011 plan following the 2010 census. *See id.* The statute empowers the Secretary only to carry out elections pursuant to these districts, not to exercise discretion in refashioning districts. *See La. Fed’n of Tchrs. v. State*, 2013-0120, p. 26 (La. 5/7/13), 118 So. 3d 1033, 1051 (“Under well-established rules of interpretation, the word ‘shall’ excludes the possibility of being ‘optional’ or even subject to ‘discretion,’ but instead ‘shall’ means imperative, of similar effect and import with the word ‘must.’”). The Secretary, whose “duties are ministerial,” has no authority himself to draw new maps. Defs. Exceptions Mem. 15. Indeed, the Secretary concedes in his Exceptions that he has no role in redistricting. *Id.*

39. There are only two possible avenues for congressional redistricting in Louisiana: either a new plan is enacted through legislation or a new plan is adopted through judicial

intervention. *See, e.g., Grove v. Emison*, 507 U.S. 25, 33 (1993). Where congressional districts are malapportioned—whether because of legislative action or inaction—the law “embraces action by state and federal courts.” *Branch v. Smith*, 538 U.S. 254, 272 (2003) (plurality opinion).

40. It is not only encouraged that state courts adopt lawful election maps when legislatures fail to do so, it is commonplace. *See* La. Const. art. I, § 22 (“All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights.”). Just this year, state courts in Wisconsin, Minnesota and Pennsylvania requested that parties submit proposed redistricting maps when it became clear that deadlock in the political branches would prevent the respective state legislatures from doing so. *See Johnson v. Wis. Elections Comm’n*, No. 2021AP1450-OA, 2022 WL 621082, at \*1 (Wis. Mar. 1, 2022);<sup>2</sup> *Wattson v. Simon*, Nos. A21-0243, A21-0546, 2022 WL 456443, at \*1 (Minn. Special Redistricting Panel Feb. 15, 2022); *Carter v. Chapman*, No. 7 MM 2022, 2022 WL 702894, at \*2–3 (Pa. Feb. 23, 2022).

41. Judicial intercession to remedy malapportionment is a necessary and ordinary remedy when state legislatures fail to satisfy their constitutional redistricting duties. As the U.S. Supreme Court has explained,

“Legislative bodies should not leave their reapportionment tasks to the [] courts; but when those with legislative responsibilities do not respond, or the imminence of a state election makes it impractical for them to do so, it becomes the ‘unwelcome obligation’ of the [] court to devise and impose a reapportionment plan pending later legislative action.”

*Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (citation omitted) (quoting *Connor v. Finch*, 431 U.S. 407, 415 (1977)); *Cf. Konrad v. Jefferson Par. Council*, 520 So. 2d 393, 397 (La. 1988) (recognizing that courts have power “to do all things reasonably necessary for the exercise of their functions as courts”).

42. The right to vote is “individual and personal in nature.” *Reynolds v. Sims*, 377 U.S. 533, 561 (2018). Any “voters who allege facts showing disadvantage to themselves as individuals

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<sup>2</sup> On March 23, 2022, the U.S. Supreme Court denied the application for a stay or writ of certiorari filed by intervenors seeking reversal of the Wisconsin Supreme Court’s congressional maps. Order Denying Application for Stay, *Grothman v. Wisconsin Elections Comm’n*, No. 21A490 (S. Ct. Mar. 23, 2022). The same day, the U.S. Supreme Court granted and reversed a similar petition from the legislation related to the state legislative districts. *Wisconsin Legislature v. Wisconsin Elections Comm’n*, No. 21A471 (S. Ct. Mar. 23, 2022). In reversing the Wisconsin Supreme Court’s implemented map on other grounds, the U.S. Supreme Court said nothing to contest the state courts’ power to correct malapportionment in congressional districts.

have standing to sue” to remedy this disadvantage. *Gill v. Whitford*, 138 S.Ct. 1916, 1920 (2018) (quoting *Baker*, 369 U.S. at 206).

43. In Louisiana, actions “can be brought only by a person having a real and actual interest which he asserts.” See La. C.C.P. art. 681. “The party raising the exception of no right of action bears the burden of proof.” *Three Rivers Commons Condo. Ass’n v. Grodner*, 220 So.3d 776, 780 (La. App. 1 Cir. 5/10/17). A real and actual interest is plainly present in cases of constitutional malapportionment. See, e.g., *Gill*, 138 S. Ct. at 1930–31 (noting that that “injuries giving rise to those [malapportionment] claims were individual and personal in nature because the claims were brought by voters who alleged facts showing disadvantage to themselves as individuals.”) (internal citations and alterations omitted).

44. An association has standing if (i) the association’s members would otherwise have standing to sue in their own right; (ii) the interests the association seeks to protect are germane to its purpose; and (iii) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Louisiana Hotel-Motel Ass’n, Inc. v. E. Baton Rouge Par.*, 385 So. 2d 1193, 1197 (La. 1980) (citing *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977)).

45. Courts in Louisiana have consistently recognized the Secretary as a proper defendant in cases involving voting rights. See *Louisiana State Conf. of Nat’l Ass’n for Advancement of Colored People v. Louisiana*, 490 F. Supp. 3d 982, 1030 (M.D. La. 2020) (“the Secretary is empowered with primary authority to carry out the election laws that are alleged to be unlawful”); *Johnson v. Ardoin*, 2019 WL 2329319, at \*3 (M.D. La. May 31, 2019) (“it cannot be said that [the Secretary of State] would not be required to comply with the orders of this Court in this matter, or that he would not be involved in providing, implementing, and/or enforcing whatever injunctive or prospective relief may be granted to [the plaintiff].”); *Terrebonne Par. N.A.A.C.P. v. Jindal*, 2014 WL 3586549, at \*4 (M.D. La. July 21, 2014) (“state officials may be sued in their official capacities when they have the power to enforce, defend, or apply the law in question.”); *Hall v. Louisiana*, 974 F. Supp. 2d 978, 992-93 (M.D. La. 2013); *Clark v. Marx*, No. 11-2149, 2012 WL 41926, at \*10, (W.D. La. Jan. 9, 2012) (noting Secretary of State’s role in opening qualifying for elected positions, as well as holding and conducting state elections in VRA case). As the court noted in *Hall*, “it cannot be said that [the Secretary] would not be required to comply with the orders of this Court in this matter, or that he would not be involved in providing,

implementing, and/or enforcing whatever injunctive or prospective relief may be granted to [Plaintiffs].” *Hall*, 974 F. Supp. 2d at 993; *see also Louisiana State Conf. of Nat’l Ass’n for Advancement of Colored People*, 490 F. Supp. 3d at 1028 (“[S]tate officials may be sued in their official capacities when they have the power to enforce, defend, or apply the law in question.”) (internal citation omitted).

## CONCLUSIONS OF LAW

### A. Plaintiffs Have Standing to Sue.

46. The Plaintiffs have standing to sue. As an initial matter, this Court need not address the associational standing of organizational Plaintiffs the Louisiana NAACP or Power Coalition because the presence in this case of individual voters with standing is sufficient to confer jurisdiction. *See Bruneau v. Edwards*, 517 So. 2d 818, 822 (La. App. 1st Cir. 1987) (“Although there are numerous plaintiffs with varying interests, the determination that the legislators have a right of action, pretermits the necessity of discussing the other plaintiffs capacity to litigate this suit.”) (citing *Bowsher v. Synar*, 478 U.S. 714, 721 (1986)).

### B. The Nineteenth Judicial District Court is the Proper Venue.

47. The Nineteenth Judicial District in “East Baton Rouge is the proper and exclusive venue” for plaintiffs to seek a remedy in the face of an impasse. *See English v. Ardoin*, 2021-0739, p. 6, 2022 WL 305363, at \*4 (La. App. 4th Cir. 2/2/22) (emphasis added); Memorandum in Support of Exceptions on Behalf of the Secretary of State at 5–8, *English v. Ardoin*, No. 2021-03538 (La. Civ. Dist. Ct. May 24, 2021); Declinatory & Peremptory Exceptions on Behalf of the Secretary of State to Plaintiffs’ First Amended & Supplemental Petition for Injunctive & Declaratory Relief at 1, *Berni v. Ardoin*, No. 2021-03538 (La. Civ. Dist. Ct. Sept. 8, 2021); Secretary of State’s Original Application for Supervisory Writs to the Honorable Sidney H. Cates, IV, District Judge at 20–24, *English v. Ardoin*, No. 2021-C-0739 (La. Ct. App. Dec. 28, 2021).

### C. This Court Has Subject Matter Jurisdiction.

48. Without specific guidance otherwise, this Court has original jurisdiction over this matter. *See* La. Const. art. V, § 16(A) (“Except as otherwise authorized by this constitution . . . a district court shall have original jurisdiction of all civil and criminal matters.”) *See* La. Const. art. I, § 22 (“All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights.”).

49. Where congressional districts are malapportioned—whether because of legislative action or inaction—the law “embraces action by state and federal courts.” *Branch v. Smith*, 538 U.S. 254, 272 (2003) (plurality opinion).

#### **D. This Dispute Is Not Premature.**

50. This dispute is not premature, and it is urgently necessary for the judiciary to ensure a Constitutional map is ready in the likely event of impasse, given the rapidly approaching election deadlines. *Purcell v. Gonzalez*, 549 U.S. 1 (2006). Louisiana’s open Congressional primary is in November of this year, with a candidate qualifying period between July 20-22, 2022.

51. Although the political branches of state government, including in Louisiana, are often charged in the first instance with adopting new redistricting plans, the U.S. Supreme Court has long recognized that “[t]he power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in [impasse] cases has been specifically encouraged.” *Grove*, 507 U.S. at 33 (quoting *Scott v. Germano*, 381 U.S. 407, 409 (1965)); *Grove*, 507 U.S. at 35 (“*Germano* requires only that the state agencies adopt a constitutional plan “within ample time . . . to be utilized in the [upcoming] election,”) (citing 381 U.S. at 409).

52. That there is an outside chance that the impasse is resolved—a possibility belied by over 25 years without a single veto override—is “irrelevant” because Plaintiffs have “realistically allege[d] actual, imminent harm.” *Arrington*, 173 F. Supp. 2d at 862. And the U.S. Supreme Court has cautioned against undue restraint in these cases that might end in constitutional violations, explaining that “individual constitutional rights cannot be deprived” merely because “a nonjudicial remedy” to correct malapportionment “*might* be achieved.” *Lucas v. Forty-Fourth Gen. Assembly*, 377 U.S. 713, 736 (1964) (emphasis added).

#### **E. Plaintiffs Have Stated a Cause of Action**

53. Plaintiffs have sufficiently stated a cause of action. Plaintiffs allege in their Petition: (i) that there is an impasse between the executive and legislative branches of the Louisiana government, NAACP Pet. ¶¶ 3–4, 11, 42–61, 91; (ii) that there is no reasonable likelihood that the Legislature will override the Governor’s veto, *id.* ¶¶ 60–61; (iii) that the Legislature will not adopt a congressional plan that the Governor will sign, *id.* ¶ 60; and (iv) that the current maps are unconstitutionally malapportioned and must be remedied, *id.* ¶¶ 5–7, 37–41. None of the arguments urged by the Secretary compel a different result.

**F. The Secretary of State is the Appropriate Defendant.**

54. As it stands, Louisiana law provides Secretary of State Kyle Ardoin with no lawful and constitutional district map to conduct the coming elections. La. Rev. Stat. § 18:1276.1.

55. The Secretary is not being asked to assume the responsibilities of the Legislature or draft his own maps. Rather, he must comply with and enforce the relief that this Court ultimately deems to be necessary to correct the current malapportioned map. That is more than sufficient to render the Secretary a proper defendant in this action.

**G. Plaintiffs Have Stated a Right of Action.**

56. Voters in overpopulated districts, including Plaintiffs, are subject to a particularized injury that is distinct from the general public. Plaintiffs have “realistically allege[d] actual, imminent harm.” *Arrington*, 173 F. Supp. 2d at 862. The U.S. Supreme Court has cautioned against undue restraint in these cases that might end in constitutional violations, explaining that “individual constitutional rights cannot be deprived” merely because “a nonjudicial remedy” to correct malapportionment “*might* be achieved.” *Lucas v. Forty-Fourth Gen. Assembly*, 377 U.S. 713, 736 (1964) (emphasis added).

**CONCLUSION**

For the foregoing reasons, the Secretary’s exceptions should be denied.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above and foregoing has been sent via electronic mail to all known counsel of record on this 25th Day of March, 2022.

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