

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. 716837 SECTION 25 DIVISION _____

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

VERSUS

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

FILED: _____
DEPUTY CLERK

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW INTO COURT come Plaintiffs the National Association for the Advancement of Colored People Louisiana State Conference ("Louisiana NAACP"), the Power Coalition for Equity and Justice (the "Power Coalition"), and Dorothy Nairne, Edwin René Soulé, Alice Washington, and Clee Earnest Lowe (together, the "Individual Plaintiffs"), through undersigned counsel, who respectfully represent the following:

INTRODUCTION

1. The State of Louisiana has failed in its constitutional obligation to reapportion its congressional plan to ensure equal population across its six congressional districts. It has been ten years since district lines have been updated, and the 2020 census demonstrates that population shifts have rendered Louisiana's current congressional districts significantly unequal in population. The State has the duty to correct such distortions while ensuring that any proposed districting plan is lawful and, in particular, also complies with Section 2 of the Voting Rights Act of 1965.

2. The enormous deviation in the size of Louisiana's congressional districts—over 88,000 people—is a far cry from the requirement under Article I, Section 2 of the U.S. Constitution that congressional districts "achieve population equality as nearly as is practicable." *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quotation omitted); *see also Wesberry v. Sanders*, 376 U.S. 1, 7 (1964) (stating that the U.S. Constitution "intends that when qualified voters elect members of Congress each vote be given as much weight as any other vote"). Under *Karcher*, the population deviation between congressional districts must be as close to zero as possible,

and any deviations—no matter how small—must, at a minimum, be necessary to achieve a legitimate state objective. *Id.* at 734, 741. Congressional district plans that fail to meet this requirement are malapportioned.

3. This cycle’s redistricting process—which could have corrected Louisiana’s malapportioned congressional districts—has reached an impasse. On February 21, 2022, the Louisiana Legislature sent identical congressional redistricting maps to the Governor John Bel Edwards for executive approval. These maps, while creating six congressional districts of equal population, were each vetoed by the Governor on March 9, on the ground that they “violate[] Section 2 of the Voting Rights Act of 1965.” The Governor’s vetoes leave in place the now-malapportioned plan adopted in 2011. *See* La. Rev. Stat. § 18:1276.1.

4. All indications are that there are insufficient votes in the Legislature to override the Governor’s veto and that the Legislature does not have the will to pass a plan that would remedy the fundamental defects identified by the Governor, and thus the legislative process has reached an impasse.

5. The State has thus failed to fulfill its obligation to adopt a properly apportioned and otherwise lawful congressional districting plan. As a result, the State is now heading into the 2022 election cycle with congressional districts that unambiguously violate the right of Louisianans to have their votes count equally. With little prospect for the timely adoption of a lawful redistricting plan, this Court has authority to remedy this manifest violation of the one-person-one-vote requirement of Article I, Section 2 of the Constitution.

6. As the 2020 census results demonstrate, Louisiana has experienced significant population shifts and growth during the past decade. These changes have rendered Louisiana’s six congressional districts unconstitutionally malapportioned. For example, when districts were redrawn after the 2011 census, Congressional District (“CD”) 6 contained only two more people than did CD 4; now, after ten years of demographic changes, that difference is over 88,000. CD 1 and CD 3 are also now significantly overpopulated. Thus, the votes of residents of those districts count less than those of residents in other districts.

7. As a result of the significant and unjustified deviations from equal apportionment, the 2011 configuration of Louisiana’s congressional districts—which will remain the operative configuration until the legislature or this Court acts to establish a new plan—violates Article 1, Section 2 of the U.S. Constitution. The current congressional plan therefore cannot be used in

any upcoming elections, including the 2022 elections.

8. The redistricting plan passed by the Legislature and vetoed by the Governor purported to address malapportionment, but it violated Section 2 of the Voting Rights Act. Although one-third of the State's voting age population is Black, only one of the six congressional districts under the Legislature's plan has a Black majority. It deprived large numbers of Black voters in the State of the opportunity to elect congressional candidates of their choice.

9. Members of the public—including Plaintiffs—as well as individual legislators, presented the Legislature with numerous options to remedy the longstanding dilution of Black voting strength in Louisiana by creating a second majority-Black district. The Louisiana House of Representatives and State Senate each rejected all of these options, and instead passed unlawful district plans, H.B. 1 and S.B. 5, that failed to include a second majority-Black district. The Legislature sent both H.B. 1 and S.B. 5 to the Governor for executive approval on February 21. On March 9, the Governor vetoed the Legislature's map, correctly stating that it “is not fair to the people of Louisiana and does not meet the standards set forth in the federal Voting Rights Act.”

10. As the Governor's veto statement indicated, the Legislature's map would have deprived Black voters of their rights under Section 2 of the Voting Rights Act by “packing” large numbers of Black voters into a single majority-Black congressional district, and “cracking” the State's remaining Black voters among the five remaining districts, all of which have a large majority of white voters. Had Governor Edwards not vetoed the Legislature-approved map, “Black voters in five of the six congressional districts are deprived of the opportunity to elect a candidate of their choice.” The Court must ensure that any maps put into place in Louisiana comply with Section 2.

11. Because there is currently an impasse resulting in malapportionment, this Court must step in and implement a map that complies with the Federal Constitution and the Voting Rights Act. Plaintiffs respectfully ask this Court to order, on an expedited basis, a lawful congressional district plan that corrects the current malapportionment and includes two majority-Black districts. Plaintiffs further respectfully ask that this Court issue a preliminary and permanent injunction requiring the State to conduct the 2022 congressional election in accordance with the court-ordered congressional district plan and grant such additional relief as may be necessary to effectuate the Court's injunctions.

PARTIES

12. Plaintiff Louisiana NAACP is a state subsidiary of the National Association for the Advancement of Colored People, Inc. It is one of the oldest and most significant civil rights organizations in Louisiana. Since its founding in 1943, the Louisiana NAACP has worked toward its mission to ensure the political, educational, social, and economic equality of all persons and to eliminate race-based discrimination. Among the Louisiana NAACP's central objectives and mission are ensuring the protection of voting rights and equitable political representation and eliminating racial discrimination in the democratic process. Its work includes efforts to register, educate, and advocate on behalf of Black voters throughout Louisiana. Perpetuating unlawful maps will impede the Louisiana NAACP's mission to achieve equitable political representation.

13. In this post-2020 redistricting cycle, the Louisiana NAACP's mission has been frustrated by the Legislature's conduct, which has delayed traditional voter education and mobilization efforts. Further, the Louisiana NAACP had to use its limited resources to advocate for electoral and representational equality on behalf of its members and other constituents in congressional maps, specifically by urging the Legislature, by written and verbal testimony, to comply with Constitutional and statutory mandates, and by proposing maps for its consideration. The Louisiana NAACP has been forced and will continue to be forced to divert resources away from its broader electoral work, such as voter registration and "get out the vote," to continue this advocacy and to counteract the negative effects of the unlawful maps.

14. The Louisiana NAACP has approximately 5,000 members throughout Louisiana, including Black Louisianans who are registered voters. The Louisiana NAACP has over 40 branches comprising adult members and 16 youth and college chapters across the state. Members live and are registered voters in nearly every parish in Louisiana.

15. The Louisiana NAACP has members who are registered voters in Congressional Districts 1, 3, and 6 as drawn in 2011. As explained *infra*, those congressional districts are now malapportioned because they are overpopulated compared to other congressional districts in Louisiana. If elections proceed without new congressional maps being adopted, these registered individuals will be irreparably harmed by having their votes unconstitutionally diluted.

16. Plaintiff Power Coalition is a coalition of groups from across Louisiana whose mission is to organize, educate, and turn out voters, and fight for policies that create a more equitable

and just Louisiana. 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.

17. 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. 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. 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. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. Plaintiff Dr. Dorothy Nairne resides in Assumption Parish, Louisiana. She is an African-American, a U.S. citizen, and lawfully registered to vote. Nairne is a regular voter. 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, therefore diluting her vote in violation of the one-person-one-vote principle. Dr. Nairne is a dues-paying member of the Assumption Parish Branch of the NAACP.

23. Plaintiff Bishop Edwin René Soulé resides in Hammond, Louisiana. He is an African-American, a U.S. citizen, and lawfully registered to vote. Soulé is a regular voter. 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, therefore diluting his vote in violation of the one-person-one-vote principle.

24. Plaintiff Dr. Alice Washington resides in Baton Rouge, Louisiana. She is an African-American, a U.S. citizen, and lawfully registered to vote. Washington is a regular voter. 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, therefore diluting her vote in violation of the one-person-one-vote principle.

25. Plaintiff Rev. Clee Earnest Lowe resides in Baton Rouge, Louisiana. He is an African-American, a U.S. citizen, and lawfully registered to vote. Lowe is a regular voter. 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, therefore diluting his vote in violation of the one-person-one-vote principle.

26. Defendant Kyle Ardoin is the Secretary of State for Louisiana and is sued in his official capacity. The Secretary of State is Louisiana's chief election officer. LA Const. art. 4, § 7; La. R.S. § 18:421. In that capacity, he 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.* As part of his duties, the Secretary of State also qualifies candidates for the U.S. House of Representatives. La. R.S. §§ 18:452, 18:462; *Johnson v. Ardoin*, 2019 WL 2329319, at *3 (M.D. La. May 31, 2019).

JURISDICTION AND VENUE

27. This action arises under Article I, § 2 of the U.S. Constitution.

28. This Court has original jurisdiction over the subject matter of this action pursuant to Article V, Section 16(A) of the Louisiana Constitution because the matter concerns “civil or political right[s].” *See also id.* (“[A] district court shall have original jurisdiction of all civil and criminal matters.”).

29. Venue is proper in this District because the cause of action arises in the parish where this court has jurisdiction. *See* La. Rev. Stat. § 13:5104(A).

30. This Court has authority to enter a declaratory judgment in this action under Louisiana Code of Civil Procedure Article 1871 and has authority to grant injunctive relief under the Louisiana Code of Civil Procedure. *See* La. Code Civ. P. 3601(A); *see also Louisiana Republican Party v. Foster*, 1996-0314, 674 So. 2d 225, 234 (La. May 21, 1996) (holding that state law governing the method of electing members to the Republican Party State Central Committee was unlawful, in part, under the federal constitution).

FACTUAL AND LEGAL BACKGROUND

Louisiana's congressional districts are based on outdated census data and are malapportioned

31. Article I, § 2 of the U.S. Constitution requires that congressional representatives be chosen “by the People of the several States.” 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%).

32. On April 14, 2011, Louisiana enacted its current congressional district map using 2010 census data. That map divided Louisiana into six congressional districts containing

approximately 755,562 people each (i.e., the state's 2010 total population of 4,533,372 divided by the number of districts).

33. The 2011 congressional plan had a maximum deviation (i.e., the difference between the most populated district and least populated district) of 162 people.

34. That plan has been used in every Louisiana congressional election since 2012.

35. In 2020, the U.S. Census Bureau conducted the decennial census required by Article I, Section 2 of the U.S. Constitution. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 census to the President.

36. As a result of the 2020 census, Louisiana has again been apportioned six congressional districts for the next decade.

37. According to the 2020 census count, Louisiana's resident population has grown to 4,657,757, an increase of nearly 125,000 people from a decade ago. But population growth has been uneven across Louisiana's existing congressional districts over the past decade. Some districts grew much faster than others and two districts lost population. As a result, the geographic distribution of the population within Louisiana has shifted and the congressional map, as drawn in 2011, is now grossly malapportioned.

38. According to Louisiana's 2020 population, the ideal population of a properly apportioned Louisiana congressional district is 776,293. The table below, based on 2020 census data provided by the Census Bureau on August 12, 2021, shows how the populations of each of Louisiana's congressional districts shifted between 2010 and 2020. For each district, the "2010 Population" column shows the district's 2010 population according to the 2010 census, and the "2020 Population" column shows the district's 2020 population based on 2020 census data. The "Shift" column shows the gain or loss in population between 2010 and 2020. The "Absolute Deviation from Ideal 2020 Population" column shows how far the 2020 population of each district strays from the ideal 2020 congressional district population. And the "Relative Deviation from Ideal 2020 Population" column shows that deviation as a percentage of the ideal 2020 district population.

District	2010 Population	2020 Population	Shift	Absolute Deviation from Ideal 2020	Relative Deviation from Ideal 2020
1	755,445	812,585	57,140	+36,292	+4.68%
2	755,538	775,292	19,754	-1,001	-0.13%
3	755,596	785,824	30,228	+9,531	+1.23%
4	755,605	728,346	-27,259	-47,947	-6.18%
5	755,581	739,244	-16,337	-37,049	-4.77%
6	755,607	816,466	60,859	+40,173	+5.17%

39. The table above demonstrates that population shifts since 2010 have rendered CD 2, 4, and 5 underpopulated, and CD 1, 3, and 6 significantly overpopulated. Indeed, according to these figures, the maximum deviation among Louisiana’s congressional districts (i.e., the difference between the most and least populated districts divided by the ideal district population) increased from near 0 to over 11 percent between 2010 and 2020. This corresponds to a population deviation among the current congressional districts of 88,120 people.

40. Due to these population shifts, Louisiana’s ten-year old congressional district map is unconstitutionally malapportioned. The use of this map in any future election will unconstitutionally dilute the strength of the votes of Individual Plaintiffs and many of the Louisiana NAACP’s and Power Coalition’s members and constituents.

41. This malapportionment gives some Louisianans more access to representation than others and some votes more weight than others. In addition to having their votes devalued, malapportionment places a heavier burden on individuals in overpopulated districts than individuals in underpopulated districts to gain meaningful access to their representatives.

The redistricting process is at an impasse

42. In Louisiana, congressional districts are drawn by the Legislature, passed through the Legislature as ordinary legislation, and subject to veto by the Governor. The Legislature may override a gubernatorial veto by a vote of two-thirds of the elected membership of each house.

43. 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 (here, Louisiana’s congressional delegation). *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 on the statute books and continues to govern elections for that unit of government until it is repealed or amended through the legislative process. *See* La. Stat. Ann. § 18:1276.1.

44. Pursuant to Joint Rule 21 of the Legislature, each redistricting plan submitted for

consideration by the Legislature must 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. Each congressional redistricting plan must also, among other things, comprise districts that have a population as nearly equal to the ideal district population as practicable.

45. 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.

46. Legislators were alerted early in the redistricting process (if they were not already aware) of the importance of not only creating maps that were properly proportioned, but also drawing districts to comply with Section 2 of the Voting Rights Act by establishing at least two majority-Black districts to protect the opportunity of Black Louisianans to elect candidates of their choice. On October 18, 2021, a coalition of 17 civil and human rights organizations submitted a letter to the House and Senate Governmental Affairs Committees providing an overview of Section 2 and explaining in detail why a congressional map with only one majority-Black district likely violates Section 2 given, among other things, the shifts in the State’s population and the continued existence of racially polarized voting patterns. The letter also attached seven illustrative maps (the “Coalition maps”), each of which provided for two majority-Black districts comprising a majority of Black voters and accorded with traditional redistricting principles including compactness and avoiding unnecessary splits in parishes and precincts.

47. The 2022 roadshows also demonstrated broad public support for increasing the number of majority-Black congressional districts from one to two in order to provide an equal opportunity for Black Louisianans to participate in the political process, as required by Section 2 of the Voting Rights Act. Out of 174 written comments received—regarding not only the congressional map, but also redistricting of the State Senate, State House, Public Service Commission, Board of Elementary and Secondary Education, and State Supreme Court—64 comments explicitly expressed support for the creation of a second majority-Black district in the new congressional plan. As one of many examples, one Baton Rouge resident submitted an

email at the Baton Rouge Roadshow stating, “I support creating a minority-majority district [for] US Congressional District 5. With hopes that my voice can be heard through the efforts of representation for people who look like me and have the same concerns for issues of gun control, healthcare, policing, homelessness, etc.” Governor Edwards also supported increasing the number of majority-Black districts, announcing at a December 16 press conference that “fairness—if it can be done—would be to have two out of the six congressional districts be minority districts.”

48. Following the conclusion of the roadshows, the Legislature convened the 2022 First Extraordinary Session (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.

49. During the Special Session, members of the House and Senate Governmental Affairs Committee introduced thirty-two bills or amendments to bills proposing various configurations of congressional maps. Twenty-two of the bills and amendments included two majority-Black districts. *See, e.g.*, H.B. 4, 1st Spec. Sess. (La. 2022); H.B. 5, 1st Spec. Sess. (La. 2022); H.B. 7, 1st Spec. Sess. (La. 2022); Amendment #116 to S.B. 5, 1st Spec. Sess. (La. 2022).

50. The Senate and Governmental Affairs Committee held its first hearing to discuss proposed congressional maps on February 3, 2022. The Committee discussed six bills regarding proposed congressional maps, five of which included two majority-Black districts in similar configurations to the Coalition maps. The Committee voted on congressional plans on February 4, 2022. The Committee voted 6-3 to reject every bill that included a second majority-Black district. Only one bill proposed a map containing a single majority-Black district, S.B. 5 introduced by Senator Hewitt. S.B. 5 was the bill that the Committee voted to send to the Senate for a floor vote.

51. On the Senate Floor, Senator Cleo Fields offered Amendment #91, which would have replaced S.B.5 with a redistricting plan that contained two majority-Black districts and that more closely adhered to other traditional redistricting principles than S.B.5. Specifically, the plan proposed by Senator Fields was more compact than S.B. 5, split fewer parishes than S.B. 5, split no precincts (unlike S.B.5), and had a lower population deviation than S.B.5. On February 8, the Senate rejected the Fields amendment and passed S.B. 5 by a vote of 27-12.

52. The House and Governmental Affairs Committee convened its first meeting to discuss

proposed congressional plans on February 4, 2022. The Committee discussed only one congressional plan, H.B. 1, which contained only one majority-Black district. After less than three hours of discussion, the House and Governmental Affairs Committee voted by 13-5 to send H.B. 1 to the House of Representatives for a floor vote.

53. The House and Governmental Affairs Committee heard five more congressional bills on February 10, 2022, each of which proposed a plan with a second majority-Black district. The Committee rejected each bill. On February 10, the House passed H.B. 1 by a vote of 70-33, after rejecting two amendments to include two majority-Black districts that were more compact, split fewer parishes than H.B. 1, split no precincts, and had less population deviation.

54. At a press conference on February 14, Governor Edwards responded to the Legislature's advancement of maps containing only one majority-Black district, calling these maps "very problematic," and stating that "[w]here you can do it, a third of the districts should be African-American majority districts. Hopefully there will be an effort in that direction in the redistricting bills we're going to get up here."

55. On February 15, the Senate and Governmental Affairs Committee voted in favor of H.B. 1, and the House and Governmental Affairs Committee voted in favor of S.B. 5. During the House and Governmental Affairs hearing, Representative Duplessis introduced Amendment #116 to S.B.5, which included two majority-Black districts, was more compact on all three widely recognized statistical measures of compactness, split fewer parishes than S.B. 5 (and H.B. 1), split no precincts, and had less population deviation. Representative Duplessis pointed out that on equal population, S.B. 5 [had] a deviation of 128 people," whereas his "amendment had an absolute range of 44 people." The House and Governmental Affairs Committee rejected the amendment by a margin of 9-5.

56. Throughout the legislative process, legislators and legislative staff acknowledged the Legislature's obligation to draw a congressional map with equal population. At all nine roadshows, legislative staff gave public presentations about the equal population requirement for congressional districts. When introducing H.B. 1, the authors of the bill, Representatives Schexnayder, Magee, and Stefanski, incorrectly claimed that H.B. 1 had the lowest population deviation of any proposal because the difference between the largest and smallest districts was only 46 people. Representative Magee claimed that "of all the maps that is [sic] going to be filed, [H.B. 1] has the lowest standard of deviation. I don't think anybody can beat it on that

point.”

57. But the maps that best achieved population equality were in fact the seven Coalition maps, which deviated from the ideal population by no more than one person. And, among the maps with whole precincts, the proposals that achieved the best population equality were maps that included two majority-Black districts, including Amendment #91 to S.B. 5 introduced by Senator Fields, Amendment #116 to S.B. 5, introduced by Representative Duplessis, and Amendment #88 to H.B. 1 introduced by Representative Gaines—in which the difference between the largest and smallest districts was only 44 people.

58. On February 18, 2022, the Legislature passed both H.B. 1 and S.B. 5, reconciling the bills with identical compromise amendments. Each bill contained identical congressional configurations. The Senate voted 27-10 to approve H.B. 1 and 26-9 to approve S.B. 5. The House voted in favor of H.B. 1 by a margin of 62-27 and S.B. 5 by a margin of 64-31. Neither bill passed with more than 70 votes, the number of votes required for the Legislature to override a gubernatorial veto. La. Const. art. III, § 18. Both H.B. 1 and S.B. 5 were sent to the Governor on February 21, 2022.

59. On March 9, Governor 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.” In a letter to the Speaker of the State House explaining his veto, the Governor stated that the Legislature’s map deprives Black voters in five of the six congressional districts of the opportunity to elect a candidate of their choice. The Governor noted that in approving its map “the Legislature rejected numerous alternative maps with two majority minority districts . . . that would have given more Black voters an opportunity to elect a candidate of their choice.”

60. There is no reasonable likelihood that the Legislature will override the Governor’s veto. The Legislature has not overridden a veto by the Governor since 1993. Representative Magee, one of the authors of H.B. 1, was reported to have expressed uncertainty about whether the Legislature has the votes to override the Governor’s veto, and to have expressed the view that the Legislature will never draw a map that the Governor would not veto. The Legislature and Governor have therefore reached impasse in the redistricting process.

61. Because Louisiana has failed to adopt a new districting plan for its congressional seats, the plan adopted in 2011, which is now grossly malapportioned, remains in force. If this Court does not act, the 2022 election will be held using the malapportioned 2011 congressional maps,

depriving Plaintiffs of their constitutional rights. In light of the impasse, this Court must act to ensure Plaintiffs and other Louisiana voters do not suffer unconstitutional vote dilution in violation of the one person-one vote principle.

The failure to enact lawful congressional district maps has harmed and will continue to harm Plaintiffs

62. The Legislature has harmed and will continue to harm voters, candidates, and Louisiana’s entire electoral apparatus by failing to put finalized congressional districts in place before elections occur. Voters are then left to vote in districts that violate their most basic democratic right to have their vote counted equally.

63. Unless the population is equally divided among districts, the voters in overpopulated districts have their votes count for less than the voters in underpopulated districts. Further, voters in overpopulated districts must work harder to influence their representatives relative to voters in underpopulated districts.

64. In addition, the Legislature’s failure to enact lawful maps is interfering with and will continue to interfere with Plaintiffs’ abilities to associate with like-minded citizens, educate themselves on the positions of their would-be representatives, and advocate for the candidates they prefer. *Cf. Anderson v. Celebrezze*, 460 U.S. 780, 787-88 (1983) (“The [absence] of candidates also burdens voters’ freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for like-minded citizens.”).

65. All of these harms are a consequence of the Legislature’s willful refusal to enact maps that comply with federal law sufficiently in advance of the elections despite repeated requests from Louisiana citizens to do so. In light of this impasse, this Court must intervene to ensure Plaintiffs and other Louisiana voters do not suffer unconstitutional vote dilution. Unless this court enacts a lawful congressional plan, Plaintiffs will continue to be deprived of their constitutional rights in the upcoming 2022 election cycle.

Any remedial districting plan must comply with Section 2 of the Voting Rights Act

66. Any remedy to correct Louisiana’s malapportioned congressional districts must also comply with Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(a), which prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color[.]” In Louisiana this requires the drawing of a second majority-Black Congressional district.

67. A Section 2 violation is established if “it is shown that the political processes leading to nomination or election” in the jurisdiction “are not equally open to participation by members of a [minority group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Id.* § 10301(b).

68. The importance of complying with the Voting Rights Act when redrawing districts is underscored by Louisiana’s long, dismal history of denying Black Louisianans an equal opportunity to participate in the State’s political process or to elect candidates of their choice. The State’s sole majority-Black district, CD 2, exists only as a result of a court order finding that the State’s prior congressional map violated the Voting Rights Act and requiring the State of Louisiana to adopt a new congressional map. *See Major v. Treen*, 574 F. Supp. 325 (E.D. La. 1983). In the forty years since *Major v. Treen*, there have been important changes in the geography of where Black voters reside across the state, including but not limited to higher numbers of Black voters now living in Baton Rouge. As a result, drawing a congressional plan with two majority Black districts is now readily accomplished while satisfying other redistricting principles better than the plan passed by the Legislature, as the many alternative plans introduced during the Special Session demonstrate.

69. As a result of Louisiana’s high rates of racially polarized voting, where voters of the same race vote similarly, Black candidates are chronically underrepresented in public office. Louisiana has long had the second largest Black population by percentage of any State in the United States. Yet it has had only four Black congresspeople since Reconstruction and has never had a Black U.S. Senator. It has not had a Black Governor since Reconstruction. It has never had a Black Secretary of State or Attorney General. No Black person has won election to Congress outside of a majority-Black district since reconstruction. Black public officials are dramatically underrepresented in both houses of the State legislature, in the judiciary, and in public offices at every level of government.

70. According to the 2020 census, people of color represent nearly 40 percent of Louisiana’s voting age population. Louisiana has a voting age population of 3,570,548, with a non-Hispanic Black voting age population of 1,140,492 (32 percent), a Hispanic/Latino voting age population of 106,921 (three percent), and a non-Hispanic Asian American voting age population of 142,562 (four percent).

71. The dilution of Black voting strength in violation of the Voting Rights Act “may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.” *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986). The Supreme Court has identified three necessary preconditions for a claim of vote dilution under Section 2 of the Voting Rights Act: (1) the minority group must be “sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) members of the minority group must be “politically cohesive” in their support of particular candidates; and (3) the majority must vote “sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Gingles*, 478 U.S. at 50-51 (citations omitted).

72. As applied here, the Voting Rights Act requires that any districting plan adopted to remedy malapportionment must also include two majority-Black districts.

73. The three preconditions outlined by the Supreme Court in *Thornburg v. Gingles*—the size and geographic compactness of Black voters in Louisiana; their political cohesiveness; and bloc voting by the white majority sufficient to usually defeat Black voters’ preferred candidates—are readily satisfied.

74. **Precondition 1 – Large and geographically compact:** Louisiana’s Black voters are sufficiently numerous and geographically compact to form a majority in two properly apportioned congressional districts in a six-district plan. Black voters make up over 50 percent of Louisiana’s two largest metro areas, Baton Rouge and New Orleans, and—as the Coalition Maps and other congressional maps presented to the Legislature show—Black voters constitute more than enough voters to support the creation of two majority-Black districts that would allow Black voters to elect candidates of their choice.

75. **Precondition 2 – Politically cohesive:** Black voters in Louisiana are politically cohesive. They vote overwhelmingly for different candidates from those supported by white voters. *See, e.g., St. Bernard Citizens For Better Gov’t v. St. Bernard Par. Sch. Bd.*, 2002 WL 2022589, at *7-8 (E.D. La. Aug. 26, 2002) (finding that Black voters “act[ed] as a politically cohesive unit” in state and local elections). This can be shown by a number of prior electoral results, including the 2017 general run-off election for State Treasurer (Derrick Edwards received 96 percent of the Black vote), Secretary of State (in 2018, Gwen Collins-Greenup received approximately 95 percent of the Black vote, in 2019 she received approximately 96

percent), and Attorney General (in 2019 Ike Jackson Jr. received 91.3 percent of the Black vote).

76. **Precondition 3 – Majority bloc voting:** Where there is a white majority in the state, white voters generally vote as a bloc to defeat Black voters’ preferred candidates. For example, in the 2020 congressional elections, voters in four out of Louisiana’s five majority-white districts had a choice between Black and white congressional candidates, and the white candidates prevailed in all four races.

77. Multiple courts have recognized that such racially polarized voting—referring to both the political cohesiveness of Black voters and bloc voting by white voters—has been a consistent feature of Louisiana’s political landscape, and that it continues to pervade statewide and local elections today. *See, e.g., Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 433–37 (M.D. La. 2017), *rev’d on other grounds, Fusilier v. Landry*, 963 F.3d 447 (5th Cir. 2020) (finding racially polarized voting patterns in the judicial elections of Terrebonne Parish); *St. Bernard Citizens For Better Gov’t*, 2002 WL 2022589, at *7 (E.D. La. Aug. 26, 2002) (finding racially polarized voting patterns in statewide gubernatorial and local parish elections); *Louisiana State Conference of NAACP v. Louisiana*, 490 F. Supp. 3d 982, 1019 (M.D. La. 2020) (holding that plaintiff had standing to challenge Louisiana’s Supreme Court district map on the basis, in part, of allegations of polarized voting).

78. Once these preconditions are established, the Court must consider whether, under the totality of the circumstances, members of a racial group have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. 52 U.S.C. § 10301(b). The Senate Report on the 1982 amendments to the Voting Rights Act identifies several non-exclusive factors, referred to as the “Senate Factors,” that courts should consider when determining if, under the totality of the circumstances, the operation of the districting plan results in vote dilution in violation of Section 2.

79. These factors likewise weigh in favor of requiring that any remedial districting plan include two majority-Black districts, as demonstrated by the following non-exhaustive examples.

80. **Factor 1 – History of Official Voting-Related Discrimination:** Louisiana has a long, deeply ingrained history of voting-related discrimination. Throughout Louisiana’s long history of chattel slavery, only white people possessed the right to vote. *Citizens for a Better Gretna*

v. *City of Gretna, La.*, 636 F. Supp. 1113, 1116 (E.D. La. 1986), *aff'd*, 834 F.2d 496 (5th Cir. 1987). In 1898, Louisiana lawmakers convened a constitutional convention to update the state constitution, with the explicit goal of disenfranchising Black people, for example by enacting a constitutional provision called a “grandfather clause” that imposes onerous property and education requirements on prospective voters, but waiving those requirements for registrants whose fathers or grandfathers had been registered to vote before 1867—all of whom, of course, were white. *Id.* at 1117. In the 1950s, Louisiana enforced interpretation and “good morals” tests, and anti-single shot voting provisions (the latter designed to minimize the ability of minority voters to effectively marshal their voting power in multimember districts). In 1959, the Legislature established a majority-vote requirement for election to party committees that impeded minorities from obtaining fair representation on those committees.

81. **Factor 2 – The Extent of Racial Polarization:** As described above, *supra* ¶¶ 75-77, the State’s elections evince the presence of extreme racial polarization. In 2020, Louisiana’s most recent congressional elections, voters in four of the five white-majority districts had a choice between Black and white candidates and in each of these instances, the white candidate prevailed.

82. **Factor 5 – Effects of Louisiana’s History of Discrimination:** Black residents of Louisiana badly trail white residents across multiple social welfare and economic metrics. Nearly half of Louisiana’s Black children live in poverty. Unemployment data from early 2021 shows that Black people were unemployed at more than twice the rate of whites—12 percent compared to 5.3 percent. As of 2010, white citizens in Louisiana were also more than three times more likely than Black citizens to own a home. Health disparities also persist among Black as compared to white Louisianans. De facto racial segregation remains the rule in the State’s educational system. The incarceration rate in Louisiana, as elsewhere, has expanded greatly over the last few decades, the burden of which has disproportionately fallen on communities of color.

83. **Factor 6 – Presence of Racial Campaign Appeals:** Louisiana political campaigns have been consistently characterized by both overt and implicit racial appeals. The political career of longtime neo-Nazi and former Ku Klux Klan leader David Duke is sadly illustrative. In 1989, Duke was elected to the Louisiana State House of Representatives. Duke would go on to run for higher public office in the State multiple times over the course of the next few years, in

each case receiving tens or hundreds of thousands of votes. Other candidates in Louisiana have followed a similar playbook for racial appeals. During his successful 1995 race for Governor against a Black opponent, Mike Foster did not repudiate an endorsement he received from a white nationalist group associated with Duke. He stated publicly that Jefferson Parish was “right next to the jungle in New Orleans and has a very low crime rate.” In 2012, a candidate for Louisiana Supreme Court District 5, Justice Jeff Hughes, darkened the image of his Black opponent John Guidry in campaign materials, and referred to Guidry as an “affirmative action Democrat.” In 2018, a white Tangipahoa School Board Member and candidate for reelection posted a picture of a noose on Facebook. The picture carried the caption “IF WE WANT TO MAKE AMERICA GREAT AGAIN WE WILL HAVE TO MAKE EVIL PEOPLE FEAR PUNISHMENT.”

84. Factor 7 – Extent to Which Black Louisianans Have Been Elected to Public Office:

Despite constituting approximately one-third of the State’s population, Black Louisianans remain chronically underrepresented in public offices in the State. As noted, Louisiana has never had a Black U.S. Senator. No majority white congressional district in Louisiana has elected a Black representative since Reconstruction. Only 26 of the current 105 members of the Louisiana State House and 10 of the 39 members of the State Senate are Black. Only three out of the current 11 members of the Louisiana Board of Elementary and Secondary Education are people of color. While the Black population comprises about 30.5 percent of the voting age population in Louisiana, Black people only account for about 17.5 percent of the judges in Louisiana. *See Terrebonne Par. Branch NAACP*, 274 F. Supp. 3d at 445.

85. Factor 8 – Lack of Responsiveness to the Particularized Needs of Black Voters:

Black Louisianans suffer from the effects of discrimination across many areas, including education, employment, and health. In each of these areas, the continued existence of severe racial disparities is indicative of a failure on the part of elected officials to address the needs of Black residents. The lack of representation of Black Louisianans in public office has contributed to the failure of elected officials to respond to the particularized needs of the Black community. For example, Black residents have the highest rates of COVID-19 cases and deaths in Louisiana. Racial disparities have also been observed in the distribution of COVID-19 vaccines across the state. Compared with white neighborhoods, parts of the state with high concentrations of Black residents (such as North Baton Rouge) have suffered from fewer

vaccination sites.

86. Factor 9 – Tenuousness of Reasons for Retaining a Single Majority-Black District:

Throughout the redistricting roadshow and Special Session, opponents of a second majority-Black district in the Legislature provided shifting and tenuous justifications for their opposition to a second majority-Black district. For example, Representative Stefanski falsely argued that it was not mathematically possible to maintain CD 2 as a majority-Black district without including Baton Rouge in that district. But each of the maps with two majority-Black districts introduced by legislators contained a second majority-Black district without including substantial portions of the Black community in Baton Rouge. In addition, Senator Hewitt claimed that in all of the proposed maps with two majority-Black districts, the Black voting age population in the two majority-Black districts was too low and would result in Black voters being unable to elect candidates of their choice in either district. When asked how she reached that conclusion, she admitted that she had not received any substantive analysis supporting her assertion. Finally, legislators' claims of wishing to prioritize keeping parishes and precincts whole were belied by their rejection of maps containing two majority-Black districts that split fewer parishes and precincts than S.B. 5 and H.B. 1.

CAUSE OF ACTION

**Violation of Article I, Section 2 of the United States Constitution
Congressional Malapportionment**

87. Plaintiffs re-allege and incorporate by reference all prior paragraphs of this Petition as though fully set forth herein.

88. Article 1, Section 2 of the U.S. Constitution provides that members of the U.S. House of Representatives “shall be apportioned among the several States . . . according to their respective Numbers.” This provision “intends that[] when qualified voters elect members of Congress each vote be given as much weight as any other vote,” *Wesberry*, 376 U.S. at 7, meaning that congressional districts in a state must “achieve population equality as nearly as is practicable,” *Karcher*, 462 U.S. at 730 (quoting *Wesberry*, 376 U.S. at 7-8).

89. The U.S. Constitution thus requires virtually identically sized congressional districts. *Karcher*, 462 U.S. at 730. Any deviation from absolute population equality dilutes equality of access to representation and must be justified by the state. *Kirkpatrick*, 394 U.S. at 531 (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”).

90. In 2011, when Louisiana’s existing congressional plan was enacted, the deviation in population among districts was no more than 162 people. Now, due to the significant population shifts demonstrated by the 2020 census, the population deviation among the current congressional districts is 88,120 people.

91. There is no justification for this continued deviation after the 2020 census, and the Legislature has not suggested that there is. Rather, Louisiana’s political branches have reached an impasse because the Legislature is unable to pass lawful districting plans; absent court intervention, lawful congressional districts will not be in place before commencement of the 2022 election cycle.

92. Accordingly, if the election cycle is allowed to continue under these circumstances, voters in overpopulated districts, like Individual Plaintiffs, will suffer from vote dilution and be deprived of political power and tangible resources.

93. The Louisiana NAACP and the Power Coalition and their members and constituents—voters and organizers in Louisiana—are also directly harmed as set forth above.

94. Plaintiffs are suffering these harms on a current and ongoing basis.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

- A. Declare 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;
- B. Preliminarily and permanently enjoin Defendant and all persons acting on their behalf or in concert with him from implementing, enforcing, or conducting any elections under Louisiana’s current malapportioned congressional districts.
- C. Adopt and implement, or appoint a special master to adopt and implement, a new congressional district plan on an expedited basis that complies with the U.S. Constitution and Section 2 of the Voting Rights Act, in particular by ensuring that Louisiana contains two majority-Black districts.
- D. Enter 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, in particular by ensuring that Louisiana contains two majority-Black districts.

- E. Grant such relief as may be necessary to effectuate the Court's injunctions, including, if necessary at the time such injunctions are entered, the suspension of any relevant deadlines contained in La. Rev. Stat. §§ 18:467(2), 18:468(a), 18:1945(C), Louisiana Election Code § 467(2), as well as any other relevant deadlines.
- F. Grant such other relief, including plaintiffs and their attorneys' fees and costs, as the Court considers just.

Dated: March 15, 2022

By: /s/John Adcock

John Adcock
Adcock Law LLC
Louisiana Bar No. 30372
3110 Canal Street
New Orleans, LA 70119
Tel: (504) 233-3125
Fax: (504) 308-1266
jnadcock@gmail.com

Leah Aden*
Stuart Naifeh*
Kathryn Sadasivan*
Victoria Wenger*
NAACP Legal Defense and Educational Fund,
Inc.
40 Rector Street, 5th Floor
New York, NY 10006
Tel: (212) 965-2200
laden@naacplef.org
snaifeh@naacpldf.org
ksadasivan@naacpldf.org
vwenger@naacpldf.org

Robert A. Atkins*
Yahonnes Cleary *
Jonathan H. Hurwitz*
Daniel S. Sinnreich*
Amitav Chakraborty*
Adam P. Savitt*
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
1285 Avenue Of The Americas, New York,
NY 10006
Tel.: (212) 373-3000
Fax: (212) 757-3990
ratkins@paulweiss.com
ycleary@paulweiss.com
jhurwitz@paulweiss.com
dsinnreich@paulweiss.com
achakraborty@paulweiss.com
asavitt@paulweiss.com

Nora Ahmed*
Megan E. Snider
LA. Bar No. 33382
ACLU Foundation of Louisiana
1340 Poydras St, Ste. 2160
New Orleans, LA 70112
Tel: (504) 522-0628
nahmed@laaclu.org
msnider@laaclu.org

Tracie Washington
LA. Bar No. 25925
Louisiana Justice Institute
Suite 132
3157 Gentilly Blvd
New Orleans LA, 70122
Tel: (504) 872-9134
tracie.washington.esq@gmail.com

T. Alora Thomas*
Sophia Lin Lakin*
Samantha Osaki*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
athomas@aclu.org
slakin@aclu.org
sosaki@aclu.org

Sarah Brannon*
American Civil Liberties Union Foundation
915 15th St., NW
Washington, DC 20005
sbrannon@aclu.org

**Pro hac vice applications forthcoming*

Counsel for Plaintiffs

Please Serve

Hon. R. Kyle Ardoin
Louisiana Secretary of State
8585 Archives Ave.
Baton Rouge, LA 70809