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

DR. DOROTHY NAIRNE, REV. CLEE EARNEST LOWE, DR. ALICE WASHINGTON, STEVEN HARRIS, BLACK VOTERS MATTER CAPACITY BUILDING INSTITUTE, and THE LOUISIANA STATE CONFERENCE OF THE NAACP, *Plaintiffs*, v. R. KYLE ARDOIN, in his official capacity as Secretary of State of Louisiana *Defendant*.	CIVIL ACTION NO. 3:22-cv-00178 SDD-SDJ Chief Judge Shelly D. Dick Magistrate Judge Scott D. Johnson

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs—four individual voters in Louisiana and two organizations dedicated to furthering the rights of such individual voters—challenge the redistricting plans for the Louisiana House of Representatives and Louisiana Senate because they dilute the voting strength of Black voters, in violation of Section 2 of the Voting Rights Act of 1965 ("VRA"), 52 U.S.C. § 10301. Rather than contending with the merits of this case, Defendants claim that Plaintiffs lack standing to raise this critical challenge, and seek dismissal on that ground. For the reasons set forth below, Defendants' motion is meritless and should be denied.

Defendants' standing argument is premised on a misstatement of Plaintiffs' claims in this action and a misconception of the law. Defendants erroneously claim that, in this action, "Plaintiffs challenge Louisiana's house and senate districting plans *in their entirety*." Defs.' Br. at 1 (emphasis added). Building on this erroneous premise, Defendants go on to argue that "no Plaintiff

has any claim of standing as to most districts." *Id.* But Defendants' characterization of Plaintiffs' claims—and the straw man argument they construct in response—is wrong: Plaintiffs *do not* challenge every district in the House and Senate plans. To the contrary, Plaintiffs seek to create six additional majority-Black House districts and three additional majority Senate districts in specific parts of the state. SMF[1] ¶ 8. Specifically, in the Senate map, the evidence proffered by Plaintiffs shows that the Black vote has been diluted in the Shreveport area, Jefferson Parish, and in the East Baton Rouge area, and Plaintiffs have seek to create one new Senate district in each of these areas, numbered as Senate District 38, 19, and 17 in the illustrative plan prepared by Plaintiffs' demographic expert Bill Cooper in June 2023. Likewise, in the House map, the Black vote has been diluted in the Shreveport area, the East Baton Rouge area, the Ascension area, the Lake Charles area, and the Natchitoches area, and plaintiffs seek to create one new district in each of the Shreveport, Ascension and Lake Charles areas, and three new districts in the Baton Rouge area, numbered as House District 1, 65, 68, 69, 60, 38, and 23 in Mr. Cooper's June 2023 illustrative plan. As to *these specific districts in these specific areas*, Plaintiffs have standing to bring their challenges through the four Individual Plaintiffs (who reside in some of the relevant districts) and the two Organizational Plaintiffs (who have standing through the residence of Louisiana NAACP members as well as through the enacted maps' impact on both organizations' activities).

Specifically, each of the Individual Plaintiffs have suffered a cognizable injury-in-fact as a result of Louisiana's state legislative maps, which illegally "crack" or "pack" Black voters into voting districts and dilute the value of their votes. Each Individual Plaintiff's status as a Black

[1] "SMF" refers to the Plaintiffs' Opposing Statement of Material Facts filed contemporaneously herewith.

registered voter living in a dilutive district that could be redrawn into a new majority-Black district confers Article III standing. The Louisiana NAACP has associational standing to challenge the redistricting plan through certain of its individual members, Black voters who reside in the relevant districts and are harmed in the same manner as the Individual Plaintiffs. Finally, both the Organizational Plaintiffs have direct organizational standing, as evidenced through the injuries suffered from the diversion of resources, including cancelled program, as a result of the at-issue redistricting.

For these reasons, as more fully set forth herein, Plaintiffs respectfully request that the Court deny Defendants' motion in its entirety.

I. FACTUAL BACKGROUND

Congress enacted the VRA for the "broad remedial purpose of 'ridding the country of racial discrimination in voting.'" *Chisom v. Roemer*, 501 U.S. 380, 403-404 (1991) (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966)). In 1982, Section 2 of the VRA was amended to prohibit the use of any "voting qualification or prerequisite to voting or 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 . . . ." 52 U.S.C. § 10301(a). Section 2 outlaws voting practices that "'interact[] with social and historical conditions' [to] impair[] the ability" of Black voters to elect their candidates of choice on an equal basis with their fellow voters. *Voinovich v. Quilter*, 507 U.S. 146, 153 (1993) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986)).

"Individual Plaintiffs" are four Black citizens and voters in Louisiana who are denied an equal opportunity to elect candidates of their choice by the State Legislative Maps. Plaintiff Dr. Dorothy Nairne is a Black U.S. citizen who is lawfully registered to vote in Louisiana. SMF ¶ 32; Ex. 10 ¶¶ 2–3. Dr. Nairne has lived in House District 60 and Senate District 2 since 2017. SMF ¶ 32. Plaintiff Rev. Clee Earnest Lowe is a Black U.S. citizen who is lawfully registered to vote in

Louisiana. SMF ¶ 33; Ex. 11 ¶¶ 2–3. Rev. Lowe has lived in House District 66 and Senate District 16 since 2007. SMF ¶ 33. Plaintiff Dr. Alice Washington is a Black U.S. citizen who is lawfully registered to vote in Louisiana. SMF ¶ 34; Ex. 12 ¶¶ 2–3. Dr. Washington has lived in House District 66 and Senate District 16 since January 2016. SMF ¶ 34.[2] Plaintiff Rev. Steven Harris is a Black U.S. citizen who is lawfully registered to vote in Louisiana. SMF ¶ 35; Ex. 13 ¶¶ 2–3. Rev. Harris has lived in House District 25 and Senate District 29 since 2018. SMF ¶ 35.

The "Organizational Plaintiffs"—Black Voters Matter Capacity Building Institute ("Black Voters Matter" or "BVM") and the Louisiana State Conference of the National Association for the Advancement of Colored People ("Louisiana NAACP")—are non-profit civic engagement organizations working to empower Black political participation. SMF ¶ 7; Am. Compl. ¶¶ 26, 39. The Louisiana NAACP membership includes Black voters in the State of Louisiana who plan to vote in future State elections. SMF ¶ 19, Ex. 8 at art. II, § 1(b); *see also id.* at art. I, § 1(b); art. III, § 2. BVM's mission is to "expand Black voter engagement" and "increase power in marginalized, predominantly Black communities." SMF ¶ 9; Am. Compl. ¶ 26; Ex. 2, BVM-LA-Leg 0005179–81; Ex. 3, Ho-Sang Decl. ¶ 4.

The Louisiana NAACP regularly devotes significant portions of its resources to voter education and outreach efforts. SMF ¶ 31; Ex 9 ¶¶ 3, 9. These efforts take the form of door-to-door canvassing, voter registration efforts, community and candidate forums and other activities. SMF ¶ 31; Ex. 9 ¶¶ 8–9. The effectiveness of these efforts in getting voters registered and to the polls and the resources required are affected by a number of factors that are directly related to the legislature's districting decisions. First, the amount of voter education and mobilization resources

[2] Defendants represent that Dr. Washington resides in Senate District 5, but as indicated in her response to the interrogatories, Dr. Washington resides in Senate District 16. *See* SMF ¶ 34.

required of the NAACP depends on the activity levels of others who are also engaged in these efforts, and particularly, the efforts of political parties and political campaigns, which frequently devote substantial resources to voter mobilization in competitive elections. Ex. 9 ¶ 15; SMF ¶ 30. Where elections are not competitive, because districts have been drawn in a way that virtually guarantees that one party's candidate will win, neither party or candidate has the incentive to expend significant resources on voter mobilization. Ex. 9 ¶ 14; SMF ¶ 30. In such cases, organizations like the Louisiana NAACP must step in to fill the gap and ensure voters are registered and have the information they need about the candidates and issues and about how to cast their ballots. Ex. 9 ¶ 16; SMF ¶ 30. This was the case in 2023, the first election after the legislature passed the challenged House and Senate maps. Ex. 9 ¶¶ 15-21; SMF ¶ 30. In the areas where Black voters have been packed and cracked, there have been numerous noncompetitive House and Senate elections this year—with candidates winning outright by not drawing an opponent or not requiring a runoff election after the primary. Ex. 9 ¶ 14. Mr. McClanahan testified to his observations of disinvestment and lack of mobilization among candidates, campaigns, political parties, and other organizations in these areas. Ex. 9 ¶ 15, 20; SMF ¶ 30. In response, the Louisiana NAACP has redirected resources and volunteer efforts away from districts where political campaigns and other organizations are active to meet the needs of voters in these noncompetitive districts and ensure they are aware of the other important elections and constitutional amendments on their ballots, that their registration information is up to date, and that they know where and how to vote. Ex. 9 ¶ 16; SMF ¶ 30.

Second, redistricting affects voters' perception of whether their participation in the political process is meaningful and whether their elected representatives are responsive to their needs. SMF ¶ 31; Ex. 9 ¶¶ 9–11. For example, when volunteers engaged on voter canvassing encounter voters

who feel that their vote does not count, they spend more time educating those voters on the importance of participation, with the result that they are able to speak to fewer voters in a given day. SMF ¶ 31; Ex. 9 at ¶¶ 9–11. After the enactment of the challenged maps, the Louisiana NAACP's volunteers have faced higher levels of disillusionment among Black voters and as a result the organization has been required to divert significantly greater resources to canvassing, particularly in areas and districts where Black voters routinely see their candidates of choice defeated. SMF ¶ 31; Ex. 9 ¶¶ 9–21. As Mr. McClanahan testified at his deposition, the Louisiana NAACP has had to reallocate its voter engagement resources to specific impacted areas where Black voters are discouraged and less engaged as a result of legislative maps they perceive to be unfair. McClanahan Dep. Tr. at 97:24–101:24.

Mr. McClanahan explained that in order to devote resources such as volunteers and education and outreach materials to those specific areas where Black voters reside in noncompetitive, packed and cracked districts, the Louisiana NAACP was forced to divert them from other areas of the state. SMF ¶ 29; Ex. 9 at ¶¶ 12-18; Ex. 7, McClanahan Dep. Tr. at 103:3–1. Mr. McClanahan also testified that specific events—namely, rallies and town hall sessions to be held in Bogalusa and Orleans—were cancelled or postponed in order to redirect the Louisiana NAACP's resources to engaging Black voters who would otherwise be ignored as a direct result of the challenged redistricting plans. *See* SMF ¶ 31; Ex. 7, McClanahan Dep. Tr. At 103:1–8, 104:13–21.

Similarly, Omari Ho-Sang, BVM's senior state organizing manager for Louisiana, detailed resources for her organization that were diverted to respond to the unlawful maps, both during and after the redistricting process unfolded in Louisiana. SMF ¶ 36; Ex. 1, Ho-Sang Dep. Tr., at 10:2–4. During the redistricting process, Ms. Ho-Sang testified that funds that "could have been used

for more general GOTV" across the state were instead diverted and used to pay for activities opposing the proposed redistricting plans. SMF ¶ 15; Ex. 1 at 48:17–25. Ms. Ho-Sang provided concrete examples of these diverted funds, which included funds moved from other aspects of the organization to instead cover: (1) "mini grants to partners that participated in the process," (2) payments for "lodging for out-of-town partners during redistricting takeover," (3) a "big bus for the redistricting takeover," (4) outreach costs, such as broadcast texting, and (5) events and event planners. SMF ¶ 15; Ex. 1 at 50:3–51:22; Ex. 3, ¶¶ 16-19.

Ms. Ho-Sang testified that any funds expended from BVM's finite budget toward opposing the (then-proposed, now-enacted) legislative maps could instead have been spent toward BVM's "core" activities, including "more general GOTV to really increase the number of registered voters in a community," or to "have more teachings" to educate the community on issues that are central to BVM's mission, SMF ¶ 15; Ex. 1 at 47:21–48:25; and Ms. Ho-Sang's contemporaneous communications reveal that BVM's other initiatives were delayed during the period that BVM was devoting resources toward opposing the legislative plans at issue, *see, e.g.*, SMF ¶ 15; Ex. 4 at 0002891–93.

After enactment of the challenged maps, instead of expending its limited resources on voter registration efforts or educating constituents on issues that are important to Black voters in Louisiana, BVM has diverted resources from those core activities toward finding ways to hold elected officials accountable, even in districts where Black voters are unable to elect their candidate of choice and are receiving unfair representation. SMF ¶ 15; Ex. 3, ¶ 25. This accountability strategy includes a campaign to hold legislators accountable for voting against fair maps and diluting Black Louisianans' votes, and to "mak[e] sure that those who make it to the office uphold their responsibilities in ensuring fair and equal representation in our communities,"

even in the face of that dilution. SMF ¶ 15; Ex. 5 at 0000383-84; *see also* Ex. 6 at 0003053, 0005833–36, 0005840. And like the Louisiana NAACP, *see supra*, BVM has also altered its approach to organizing in response to the effect that dilutive maps have had in Louisiana—including the "increasing sentiment among the people who we want to engage with that their vote does not count" because of the dilutive maps passed during the redistricting process. SMF ¶¶ 14-15; Ex. 1 at 49:3–13; Ex. 3 ¶¶ 21–26.

From the start of this case, Plaintiffs have identified certain areas as the focus of their challenge to Louisiana's state senate and house redistricting plans, *i.e.*, where the State could have drawn additional voting districts that allowed Black voters to elect Black preferred candidates, but declined to do so. In the Senate map, the Black vote has been diluted in the Shreveport area, Jefferson Parish, and in the East Baton Rouge area. To establish *Gingles* I, Plaintiffs have proffered an illustrative map, which creates new districts that are numbered as Senate District 38, 19, and 17. In the House map, the Black vote has been diluted in the Shreveport area, the East Baton Rouge area, the Ascension area, Lake Charles area, and the Natchitoches area. To establish *Gingles* I, Plaintiffs have proffered an illustrative map, which creates new districts that are numbered as House District 1, 65, 68, 69, 60, 38, and 23. *See* SMF ¶ 8; Am. Compl. ¶¶ 90, 96, 105-108, 112-15; *see also* Am. Compl. Exs. 1-4 (illustrative maps including the additional majority-minority Black opportunity districts that could have, but were not, included in the challenged redistricting plans). Plaintiffs' responses to written interrogatories similarly focused on the same, unchanging list of areas in which additional majority-minority Black opportunity

districts could be created (but were not created) when asked for data "[a]s to each Louisiana State House and State Senate District *at issue in the Complaint*."[3] SMF ¶ 8 (emphasis added).

II. LEGAL STANDARDS

A. SUMMARY JUDGMENT

The court shall grant summary judgment only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "When assessing whether a dispute to any material fact exists, we consider all of the evidence in the record but refrain from making credibility determinations or weighing the evidence." *Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co*., 530 F.3d 395, 398–99 (5th Cir. 2008) (citations omitted). The party seeking summary judgment must meet the "exacting burden of demonstrating that there is no actual dispute as to any material fact in the case." *Impossible Elec. Techs., Inc. v. Wackenhut Protective Sys., Inc.*, 669 F.2d 1026, 1031 (5th Cir. 1982) (citations omitted). In determining whether the movant has met this burden, the court must view the evidence introduced and all factual inferences from the evidence in the light most favorable to the party opposing summary judgment. *See id.* "If the moving party satisfies its burden, the non-moving party must show that summary judgment is inappropriate by setting forth specific facts showing the existence of a genuine issue concerning every essential component of its case." *Banks v. C.R. Bard, Inc*., No.17-193, 2022 WL 17490977, at *2 (M.D. La. Dec. 7, 2022) (cleaned up). "If reasonable minds might differ on the resolution of any material fact or even on the inferences arising from undisputed facts, summary judgment must be denied." *Anthony v.*

[3] In an effort to be responsive to Defendants' interrogatories, which sought information about members in all districts "at issue" (a phrase that the interrogatories did not define), the NAACP provided a list of districts parts of which would be incorporated into new majority-Black districts in Plaintiffs' illustrative plans and in which specific, identified NAACP members reside in those districts. SMF ¶ 8.

Petroleum Helicopters, Inc., 693 F.2d 495, 496 (5th Cir. 1982) (citing *Impossible Elec. Techs., Inc.*, 669 F.2d at 1031).

B. ARTICLE III STANDING

Standing is a constitutional prerequisite for this Court's jurisdiction. *See, e.g.*, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). To demonstrate standing, a plaintiff must show (1) an "injury in fact," (2) a "causal connection between the injury and the conduct complained of," and (3) a likelihood that the injury will be "redressed by a favorable decision." *Id.* at 560–61 (cleaned up). Standing is assessed plaintiff-by-plaintiff and claim-by-claim. *See In re Gee*, 941 F.3d 153, 171 (5th Cir. 2019). Defendants do not contest the causal connection between the enacted maps and the vote dilution alleged by Plaintiffs, nor that this vote dilution could be redressed by alternative maps that create additional majority-Black districts. Instead, their Motion argues solely that the Organizational Plaintiffs have not suffered an injury-in-fact.

"Each element of Article III standing must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, with the same evidentiary requirements of that stage of litigation." *Legacy Cmty. Health Servs., Inc. v. Smith*, 881 F.3d 358, 366 (5th Cir. 2018) (cleaned up); *see also Lewis v. Casey*, 518 U.S. 343, 357-58 (1996) (quoting *Lujan*, 504 U.S. at 561) (distinguishing between the burden of proof on standing at the summary judgment stage, which requires facts supporting standing be "set forth by affidavit or other evidence . . . , which for purposes of the summary judgment motion will be taken to be true," and the burden of proof on standing at trial, where "those facts (if controverted) must be supported adequately by the evidence adduced at trial"). Accordingly, where a plaintiff adduces sufficient evidence to demonstrate a genuine issue of material fact concerning standing, summary judgment should be denied. *ACORN v. Fowler*, 178 F.3d 350, 360-61 (5th Cir. 1999).

III. ARGUMENT

The evidence proffered by the Organizational Plaintiffs creates a triable issue as to whether each organization has standing in its own right as a result of the concrete impairment of its activities and ability to achieve its mission caused by the enacted map's impact on its civic engagement efforts. In addition, the NAACP has proffered sufficient evidence to create a triable issue regarding whether at least one identified member in each area of the state in which Plaintiffs seek an additional majority-Black house or senate district would have standing to sue in their own right.

A. The Individual Plaintiffs Have Standing.

Although they question whether the Individual Plaintiffs will be able to prove their standing at trial, Defendants make no argument that Summary Judgment is appropriate as to the Individual Plaintiffs. Mem. at 17-18 (conceding that the case can proceed to trial on the Individual Plaintiffs' claims). Thus, the request in their motion that the Amended Complaint "be dismissed in its entirety," Mot. at 2, cannot be granted.

In any event, the evidence clearly establishes the Individual Plaintiffs have standing. Each is a Black voter who votes regularly. SMF ¶¶ 32-35. Each resides in a House or Senate district in which their vote is diluted, either because Black voters are packed into the district in excess of what is necessary to provide Black voters an opportunity to elect candidates of choice or cracked across their district and surrounding districts, precluding Black voters from being able to elect candidates of choice. *Id.*; *see Allen v. Milligan*, 599 U.S. 1, 43 (2023) (Kavanaugh, J., concurring) (Black voters are harmed when they are drawn into a district that "cracks or packs" the minority population). And in Mr. Cooper's illustrative plan, each would be drawn into a majority-Black House or Senate district. SMF ¶¶ 32-35. This evidence is sufficient to establish that each of them has standing. *Anne Harding v. Cnty. of Dallas*, 948 F.3d 302, 307 (5th Cir. 2020) (standing to

challenging districting plan under Section 2 established where "each voter resides in a district where their vote has been cracked or packed").

B. The Louisiana NAACP Has Associational Standing.[4]

As Defendants acknowledge, an organization possesses associational standing to assert claims on behalf of its members if the organization satisfies three requirements: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). Defendants challenge only the application of the first factor to the Louisiana NAACP's associational standing, but as described below, this challenge is baseless.[5]

In service of their mistaken premise that Plaintiffs challenge all 105 state house districts and 39 state senate districts, Defendants point to Plaintiffs' prayer for relief, which seeks to enjoin the use of the current house and senate redistricting plans. Am. Compl. Prayer for Relief (A-B). But the actual factual allegations in Plaintiffs' Complaint and allegations throughout this litigation have demonstrated Plaintiffs seek to create six additional majority-Black state house districts and three additional majority-Black state senate districts in certain parts of the state in which Black voters have been packed into few districts with excessively high Black populations or cracked across several districts in a way that dilutes their voting strength. And, as described below,

[4] Plaintiffs do not assert associational standing arguments on behalf of BVM.

[5] The Louisiana NAACP also satisfies the second and third prongs of associational standing: (2) "protecting the strength of votes . . . [is] surely germane to the NAACP's expansive mission," *Hancock Cnty. Bd. of Supervisors v. Ruhr*, 487 F. App'x 189, 197 (5th Cir. 2012); and (3) "[p]articipation of individual members generally is not required when the association seeks prospective or injunctive relief, as opposed to damages." *Consumer Data Indus. Ass'n v. Texas*, No. 21–51038, 2023 WL 4744918, at *4 n.7 (5th Cir. 2023).

Plaintiffs have standing to challenge the packing and cracking of Black voters in these areas through the residence of Individual Plaintiffs or of members of the NAACP, who are voters who could be drawn into new non-dilutive majority-Black house or senate districts.

1. The Louisiana NAACP's Membership Structure Supports a Finding of Associational Standing.

The NAACP maintains a multi-tiered membership structure: the national NAACP is made up of state (or state-area) conferences, which are in turn made up of local branches and chapters. *See* SMF ¶ 19; Ex. 8 at art. I, § 1. The state conferences, branches, and chapters are collectively known as "units" of the NAACP. SMF ¶ 19; Ex. 8 at art. I, § 1, art. III, § 2. Units are generally not separately incorporated entities. SMF ¶ 19; Ex. 8 at art. III, § 1. When an individual becomes a member of the NAACP, they become a member of all the units covering the geographic area in which they live or work, that is, the national NAACP, the state conference, and any branch or chapter in their local area. SMF ¶ 19; Ex. 8 at art. IV, §§ 1, 3 (explaining that members of any unit are automatically members of the national NAACP, and that "members of [local units] are members of the State/State-Area Conference"). To be in good standing, each branch is required to have at least 50 adult members. SMF ¶ 22; *see also* SMF ¶ 22; Ex. 8 at art. IV, § 4 (describing membership requirements to join branches). At his deposition in this action, the Louisiana NAACP's President Michael McClanahan repeatedly described this structure (*see* SMF ¶ 20; Ex. 7 at 18:18–24, 32:2–7, 38:16–21, 43:1–5, 49:17–22), which is further confirmed by the Louisiana NAACP's Bylaws. *See* SMF ¶ 20; Ex. 8 at art. I, § 2(d); *see also* SMF ¶ 20, Ex. 8 at art. I, § 1(b); art. III, § 2 (defining a branch to be one type of NAACP Unit).

Defendants argue that the Louisiana NAACP does not have "individual members," cherry-picking five words from Mr. McClanahan's lengthy deposition testimony regarding the NAACP's membership structure, claiming that Mr. McClanahan said the NAACP Louisiana State conference

does not have "members . . . per se. Not individually." *See* Dkt. 149-1, at 7. But Defendants tellingly omit the testimony that followed, which clarified that the Louisiana NAACP's individual members "just have to become a member of the branch" and then that "branch is a member of the State Conference." *See* SMF ¶ 19; Ex. 7, at 29:11–18. In other words, and contrary to Defendants' claims, the Louisiana NAACP *has* individual members—those individuals join the Louisiana NAACP's local branches and those local branches, taken together, make up the Louisiana NAACP. SMF ¶ 19; Ex. 7 at 29:11–18; *see also* Ex. 9 ¶ 4. Moreover, Defendants further omit Mr. McClanahan's testimony that the NAACP Bylaws constitute the definitive authority governing the organization's membership structure. SMF ¶ 18; Ex. 7 at 18:20–24, 135:1–10. Those bylaws plainly spell out that the Louisiana NAACP has individual members, who simultaneously belong to the relevant local unit, the state conference, and the National Association. *See supra*; SMF ¶ 20, 22; Ex. 8, art. IV.[6]

Even so, the Fifth Circuit has confirmed that the official membership structure of an organizational plaintiff is irrelevant where "the goals of the constitutional standing requirement" have been fulfilled. *See, e.g.*, *Friends of the Earth, Inc. v. Chevron Chem. Co*., 129 F.3d 826, 828 (5th Cir. 1997). And both the Supreme Court and the Fifth Circuit have held that an associational standing inquiry should not "exalt form over substance" when analyzing whether an association has "members" for purposes of assessing associational standing. *Id*. (quoting *Hunt*, 432 U.S. at 345). The key inquiry is simply whether the association "provides the means by which [its

[6] Even if Defendants were correct that, despite the NAACP bylaws, the NAACP Louisiana State Conference lacks individual members and has only local branches as members, the organization would still be able to establish associational standing. The organization must simply have local branches that themselves would have standing. *Hunt*, 432 U.S. at 343. The local branches in turn, would have standing if their individual members would have standing, and Defendants do not contest that the local branches in the challenged regions of the state have individual members on whose behalf they could assert associational standing.

members] express their collective views and protect their collective interests." *Id*. (quoting *Hunt*, 432 U.S. at 345). And, for the reasons stated above, the Louisiana NAACP has done that. Accordingly, Defendants' reliance on *American Legal Foundation v. F.C.C.*, 808 F.2d 84, 90 (D.C. Cir. 1987), and *Coalition for Mercury-Free Drugs v. Sebelius*, 725 F. Supp. 2d 1, 9 n.7 (D.D.C. 2010), *aff'd*, 671 F.3d 1275 (D.C. Cir. 2012) is misplaced. Defs.' Br. at 7. Not only are these cases outside the Fifth Circuit, but they fail to recognize that Louisiana NAACP members "just have to become members of the branch." McClanahan Dep. Tr., at 29:11–18.

2. The Louisiana NAACP Has Identified Specific Members with Standing to Pursue VRA Claims as to All Challenged Districts.

The evidence proffered by Plaintiffs establishes a triable issue—at the very least—concerning whether the Louisiana NAACP has individual members who would have standing to bring the Section 2 claims alleged in the complaint in their own right. First, two of the individual plaintiffs have identified themselves as members of the NAACP, Dr. Dorothy Nairne and Rev. Steven Harris. In addition, Mr. McClanahan has repeatedly affirmed that the Louisiana NAACP has identified members who currently reside in a Louisiana Senate or House District that is packed or cracked, and who would reside in a newly created majority-Black district in Plaintiffs' expert Bill Cooper's June 2023 illustrative plans. *See* SMF ¶ 28; Ex. 9, McClanahan Decl. ¶ 6. Further, at his deposition, Mr. McClanahan testified that he personally knew members of the Louisiana NAACP throughout the State of Louisiana, has visited many of their houses, and possesses personal knowledge as to many of their residences. SMF ¶ 28, Ex. 7 at 82:11–88:15. Moreover, Mr. McClanahan testified that he reviewed maps of the challenged districts and the illustrative districts to identify at least one member of the Louisiana NAACP (by way of its local branches) within each relevant district, zooming in on specific district boundaries where necessary in close cases to identify which district the member resides in. SMF ¶ 28; Ex. 7, at 129:4–14, 131:2–11;

see also Ex. 9 ¶¶ 4-7. This is information Mr. McClanahan can testify to at trial based upon his personal knowledge. Defendants have had the opportunity to test the basis for that knowledge at Mr. McClanahan's deposition, and they may use that information to challenge the sufficiency of Plaintiff's standing evidence at trial. SMF ¶ 28; Ex. 7, at 82:11–88:15.[7]

The Supreme Court has endorsed the Louisiana NAACP's approach to proving associational standing. In *Alabama Legislative Black Caucus v. Alabama* ("*ALBC*"), the organizational plaintiff's representative testified that the organization, a statewide political caucus, "ha[d] members in almost every county." 575 U.S. 254, 269–70 (2015). The Supreme Court held that based on that evidence, it was reversable error for the district court not to draw a "common sense inference" that the organization had members in the relevant districts. *Id.* at 270. Indeed, "[w]here it is relatively clear, rather than merely speculative, that one or more members have been or will be adversely affected by defendant's action," and "where the defendant need not know the identity of a particular member to understand and respond to an organization's claim of injury," there is "no purpose to be served by requiring an organization to identify by name the member or members injured." *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015). Other courts have similarly held that organizations with unnamed members have standing where standing "depends only on the facts of [the individual's] existence and residence in a particular jurisdiction." *New York v. U.S. Dep't of Com.*, 351 F. Supp. 3d 502, 606 n.48 (S.D.N.Y. 2019)

[7] Plaintiffs have objected to production of the personally identifiable information of the Louisiana NAACP's individual members as such information is protected by the First Amendment's associational privilege, and Judge Johnson denied Defendants' motion to compel such information on those grounds. Dkt. 136. To the extent this Court concludes that such information is required to establish the Louisiana NAACP's associational standing (it should not), the Louisiana NAACP should be afforded additional opportunity to present such evidence. *See* Dkt. 136 at 3, n.1 (indicating that, in the event of a change to the procedural posture of the case, "elementary principles of procedural fairness would likely require that the NAACP have an opportunity to present evidence of member residence" consistent with those rulings) (cleaned up)).

(allowing non-governmental organizational plaintiffs to proceed with unnamed members), *aff'd in part and rev'd in part on other grounds*, 139 S. Ct. 2551 (2019) (holding that governmental plaintiffs possessed standing on other grounds and not addressing the naming issue).

Defendants incorrectly assert that *ALBC* requires the production of a membership list when standing is contested. Defs.' Br. at 9. In *ALBC*, the court instructed the district court to consider on remand a membership list that the Plaintiff had already offered into evidence at the Supreme Court pursuant to Supreme Court Rule 32.3. To the extent *ALBC* can be read to require a plaintiff to produce more specific information concerning its members where standing is contested or the district court requests it, the NAACP has done so here. Unlike *ALBC*, in which the plaintiff asserted simply that it had members "in almost every county in Alabama," but did not offer evidence that "it has members … in any of the specific districts that it challenged," *ALBC*, 575 U.S. at 269–70, here, the NAACP has offered evidence that it has specific, identified members in specific districts that could be used to create new majority-Black House and Senate districts.

Relying on *Summers v. Earth Island Institute*, defendants further argue that the Louisiana NAACP must identify individual members by name to establish the first prong of associational standing. *See* Defs.' Br. at 7-10 (citing *Summers v. Earth Island Inst.*, 555 U.S. 488 (2009). In *Summers*, the plaintiff, an environmental organization, had not alleged that *any* specific member had suffered or would suffer injury-in-fact as a result of the challenged project, but had instead offered only a statistical probability that at least one member would be affected. 555 U.S. at 497-98. The Supreme Court rejected this probabilistic assertion of associational standing. *Id.* Thus, when the Court held that a plaintiff asserting associational standing must "establish[] that at least one *identified* member had suffered or would suffer harm," it was distinguishing the facts of that case, in which no such member could be identified at all—only a probability that such a member

existed. *Id. Summers* did not hold that identifying such members *by name* is the only way to satisfy plaintiffs' burden. And as explained above, *ALBC*, decided six years *after Summers*, rejects that notion. 575 U.S. at 270; *see also Democratic Party of Va. v. Brink*, 599 F. Supp. 3d 346, 356 & n.10 (E.D. Va. 2022) (discussing *Summers* and *ALBC* and explaining that *ALBC* "*did not* require the organization to point to specific individuals to prove standing" where "a reasonable inference can be drawn that such individuals exist") (emphasis in original). The other cases Defendants rely on for the proposition that associational standing requires an organization to name names are either inapposite because they do not involve associational standing or because Plaintiffs had failed to meet *Summers*'s requirement of identifying specific members who were harmed (whether by name or otherwise) and fail to grapple with *ALBC*. *E.g.*, *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990) (no membership organization as plaintiff and no assertion of associational standing); *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 2 F. 4th 1002, 1009 (7th Cir. 2021) (complaint failed to allege sufficient facts to show that any individual member would be harmed and rejecting probabilistic claim of standing under *Summers*); *Chamber of Com. for Greater Phila. v. City of Philadelphia*, No. 17-cv-1548, 2017 WL 11544778, at *1 (E.D. Pa. May 30, 2017) (same); *S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands*, LLC, 713 F.3d 175, 184 (4th Cir. 2013) (same); *cf. Pen Am. Ctr., Inc. v. Trump*, 448 F. Supp. 3d 309, 320–21 (S.D.N.Y. 2020) (finding standing where complaint voluntarily identified a member by name and mentioning *Summers* in passing). None of these cases stands for the proposition that a plaintiff must name names when other evidence establishes the existence of an identified member who has standing in their own right.

Indeed, Defendants have not cited (and cannot cite) a single case in which personal knowledge such as that relayed by Mr. McClanahan in his deposition and supporting declaration

was deemed insufficient to establish standing, particularly where an organizational representative was able to identify one member with standing in each relevant district. Under Fifth Circuit precedent, this evidence is sufficient to establish the Louisiana NAACP's associational standing to pursue the claims involved in this litigation. *Funeral Consumers All., Inc. v. Serv. Corp. Int'l*, 695 F.3d 330, 343-44 (5th Cir. 2012) (quoting *United Food & Com. Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 555 (1996)) (requiring only that the plaintiff organization prove it has "at least one member with standing to present, in his or her own right, the claim (or the type of claim) pleaded by the association").[8]

Defendants' motion for summary judgment must fail because the Louisiana NAACP offered undisputed evidence of the existence of members who are Black registered voters in the relevant districts.

C. Both the Louisiana NAACP and BVM Have Direct Organizational Standing.

1. The Record Demonstrates that the Challenged Plans Have Perceptibly Impaired the Organizational Plaintiffs' Activities and Ability to Carry Out Their Purpose, Creating Article III Standing.

An organization suffers an injury sufficient to confer standing under Article III if its ability to pursue its mission is "perceptibly impaired" by the challenged conduct. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). An organization can prove standing through "a drain on its resources resulting from counteracting the effects of the defendant's actions." *La. ACORN Fair Hous. v. LeBlanc*, 211 F.3d 298, 305 (5th Cir. 2000) (citing *Fowler*, 178 F.3d at 360). An

[8] While naming names might be one way of establishing the existence of such members, nothing in *Summers* requires a particular type or quantum of evidence to establish that an identifiable member has been harmed. While some language in Summers might suggest that a plaintiff must name names to establish associational standing, *Summers* does not actually go so far. The issue in *Summers* was not whether the members with sufficiently concrete harms had been named, but whether such members could be identified at all beyond a mere probability that they existed. 555 U.S. at 497-99 (rejecting a test that would rely on a statistical probability that at least one member would be harmed by the challenged activity).

organization suffers a drain on its resources where it devotes resources "toward mitigating [the] real-world impact" of the challenged conduct. *OCA-Greater Houston v. Texas*, 867 F.3d 604, 612 (5th Cir. 2017). "[T]he injury alleged as an Article III injury-in-fact need not be substantial; it need not measure more than an identifiable trifle." *Id.* (cleaned up); *see also United States v. Students Challenging Regul. Agency Procs*., 412 U.S. 669, 689 n.14 (1973) (explicitly rejecting a requirement that an injury be significant and noting that injuries such as "a fraction of a vote, a $5 fine and costs, and a $1.50 poll tax" are sufficient to constitute an injury-in-fact (internal citations omitted)).

Here, as in *OCA*, each of the Organizational Plaintiffs "went out of its way to counteract the effect" of the challenged redistricting map. 867 F.3d at 612. BVM created an entirely new accountability project to hold elected representatives accountable in uncompetitive districts. The NAACP worked to engage Black voters in areas of the state where the plans packed and cracked them, creating uncompetitive districts, reducing planned efforts in other parts of the state and eliminating other planned activities. As in *OCA*, and unlike *City of Kyle*, these voter education efforts were not related to or incurred in the service of litigation. *Id.* at 612-13 (distinguishing *City of Kyle*, 626 F.3d at 238). These diversions of resources are sufficient to establish direct organizational standing. *OCA*, 867 F.3d at 612; *Fowler*, 78 F.3d at 360; *see also Harding v. Edwards*, 484 F. Supp. 3d 299, 316 (M.D. La. 2020) (finding standing where organizations demonstrated "concrete spending changes and new initiatives in response to Defendants' actions").

Defendants contend that this reallocation of resources from one part of the state to another part amounts to "'routine' strategic 'activities' of an advocacy group." Defs.' Br. at 12. It is difficult to imagine a starker diversion of resources than a decision not to engage in specific planned activities in one part of the state in order to increase resources devoted to voter engagement

in another part of the state, as Mr. McClanahan described (SMF ¶ 31; Ex. 7 at 103:1–8, 104:1), or as Ms. Ho-Sang described, diverting resources from planned voter education and registration projects to efforts to ensure elected officials in uncompetitive districts are held accountable to Black voters (SMF ¶¶ 14-15; Ex. 1 at 49:3–13; Ex. 3, ¶¶ 21–26). And as this evidence makes clear, Defendants' contention that Plaintiffs identified no cost increase or concrete activities that were forgone (Defs.' Br. at 12), is simply false: It is the increased cost of voter engagement in uncompetitive districts forsaken by political campaigns and where elected officials are not accountable that requires a shift of resources from other districts and projects. Moreover, *NAACP v. City of Kyle*, on which Defendants rely for this assertion, dealt with resources dedicated to lobbying, which would have been dedicated to the same activities regardless of the challenged conduct. *See* 626 F.3d 233, 238 (5th Cir. 2010). It provides no support for the notion that an allocation of organizational resources that are directly shaped by the challenged conduct are insufficient to establish standing simply because an organization must make decisions about how to allocate its resources in any event. It is not the fact of allocating organizational resources that is at issue. It is the specific dedication of substantial resources to activities that were not planned and that would not be conducted but for the challenged redistricting plan that constitutes the injury, SMF ¶ 31; Ex. 7 at 103:1–8, Ex. 9 ¶¶ 9–21; Ex. 3, ¶¶ 24–26, and that is sufficient to establish injury-in-fact for standing purposes. *OCA*, 867 F.3d at 612; *Fowler*, 78 F.3d at 360; *Harding*, 484 F. Supp. 3d at 316.

Defendants further argue that "to extent that the Louisiana NAACP claims injury from reduced excitement of Black voters, see, e.g., SMF ¶ 30, that 'simply' describes 'a setback to the organization's abstract . . . interests.'" Defs.' Br. at 12 (citing *Havens Realty*, 455 U.S. at 379). But as explained above, Mr. McClanahan described the concrete ways in which "reduced excitement

of Black voters" impacts the organization's ability to carry out its mission and the increases the resources required to do so. Additionally, apart from voter apathy, Mr. McClanahan explains how the reduced resources expended by other organizations as a result of uncompetitive elections causes an increased burden on the Louisiana NAACP. Those concrete impacts are sufficient to confer organizational standing.

The cases Defendants cite for the proposition that the BVM cannot support standing based on resources expended during the period "when the Louisiana Legislature was deliberating over redistricting plans, but before the challenged plans were adopted" do not support Defendants' argument. Defs.' Br. at 13. *Kyle* establishes only that "routine lobbying activities" that of a "dedicated lobbying organization" that are indistinguishable from an organization's ordinary expenditures cannot establish standing if those activities cannot be shown to "frustrate," "complicate," or "curtail" the organization's other routine activities, or to "perceptibly impair" the organization's ability to "carry out its purpose." *OCA-Greater Houston*, 867 F.3d at 610-12 (citing *City of Kyle*, 626 F.3d at 238–39); *see also US Inventor Inc. v. Vidal*, No. 21-40601, 2022 WL 4595001, at *5 (5th Cir. Sept. 30, 2022) (per curiam) (rejecting standing where alleged injury consisted of activities solely connected to the organization's routine lobbying on behalf of its members). There is at least a genuine dispute of material fact regarding whether the significant resources that BVM expended toward advocating for fair and lawful maps can be described as a routine or ordinary organizational activity. *See infra* at 6-8 (describing BVM's extensive efforts to fight for fair maps). And there is at least a genuine dispute of material fact regarding whether the diversion of these resources frustrated, complicated, or curtailed BVM's other activities. *Id.*

In any event, while BVM expended significant resources prior to the plans' adoption to try to prevent the unlawful maps from taking effect and diluting the votes of Black Louisianans in the

first place, the record makes plain that BVM's diversion of resources was not *limited* to the period before the legislature passed the challenged maps. Indeed, in her deposition, Ms. Ho-Sang specifically testified that: "there were costs leading into the redistricting, there were costs during the redistricting takeover, *and there were costs after as well*" that were diverted from the BVM's other activities. SMF ¶ 15; Ex. 1 at 52:1–4. As long as the unlawful maps remain in place, BVM will continue to need to divert resources from its core activities (*i.e.*, voter registration efforts, or educating constituents on issues that are important to Black voters in Louisiana) toward engaging with the elected officials that represent Black voters in unlawfully packed and cracked districts, and toward convincing Black voters who rightfully believe that the maps dilute their power that their votes still matter. SMF ¶¶ 15–16; Ex. 3, ¶¶ 23–26. And the enacted maps' dilutive effect on BVM's constituents "frustrates," "complicates," and fundamentally impairs BVM's core mission: to expand Black voter engagement and increase power in marginalized, predominantly Black communities. *OCA-Greater Houston*, 867 F.3d at 610; *US Inventor Inc.*, 2022 WL 4595001, at *5. *See*; SMF ¶ 9; Ex. 2, BVM-LA-Leg 0005178-81; Ex. 3, ¶ 4. This "concrete and demonstrable injury to the organization's activities" additionally constitutes "far more than simply a setback to the organization's abstract social interests," *Havens Realty*, 455 U.S. at 379, and is sufficient to demonstrate standing.

Both of the Organizational Plaintiffs have met their burden of establishing triable issues concerning direct injury they suffered, and summary judgment should be denied.

2. The Organizational Plaintiffs Have Statutory Standing.

As the Supreme Court held in *Morse v. Republican Party of Virginia*, "the existence of the private right of action under Section 2 . . . has been clearly intended by Congress since 1965." 517 U.S. 186, 232 (1996) (Stevens, J.) (plurality opinion on behalf of two justices) (alteration in original) (quoting S. Rep. No. 97-417, pt. 1, at 30 (1982)); *accord id*. at 240 (Breyer, J., concurring)

(expressly agreeing with Justice Stevens on this point on behalf of three justices). This Court has previously rejected a challenge to Section 2's private right of action and found it "undisputed that the Supreme Court and federal district courts have repeatedly heard cases brought by private plaintiffs under Section 2." *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 819 (M.D. La.), *cert. granted before judgment*, 142 S. Ct. 2892, 213 L. Ed. 2d 1107 (2022), *and cert. dismissed as improvidently granted*, 143 S. Ct. 2654 (2023). It is equally true that the federal courts have repeatedly heard cases under Section 2 brought by civic engagement organizations such as the Organizational Plaintiffs here. *See*, *e.g.*, *OCA-Greater Houston*, 867 F.3d at 610 (finding OCA-Greater Houston had organizational standing to bring Section 2 challenge); *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 624 (6th Cir. 2016) ("NEOCH has standing for its VRA claims"); *Harding*, 484 F. Supp. 3d at 314-16 (M.D. La. 2020) (finding the Louisiana NAACP had direct organizational standing to pursue a Section 2 claim); *People First of Alabama v. Merrill*, No. 2:20-CV-00619-AKK, 2020 WL 4747641 (N.D. Ala. Aug. 17, 2020); *Veasey v. Perry*, 29 F. Supp. 3d 896, 906 (S.D. Tex. 2014) (rejecting statutory standing argument, stating, "Organizations and private parties have been permitted to enforce Section 2 of the VRA, both before and after the 2001 *Alexander* [*v. Sandoval*] case on which Defendants rely," and collecting cases).

In contrast to this substantial authority recognizing the ability of organizations such as the Louisiana NAACP and BVM to bring Section 2 cases, Defendants cite no case holding the contrary, that Section 2's private right of action does not extend to organizations. Instead, Defendants argue that Organizational Plaintiffs are not "aggrieved persons" within the meaning of the VRA, citing inapposite lawsuits brought by candidates or local governments. Defs.' Br. at 14-15 (collecting cases brought by candidates or local governments). In *Veasey*, the court rejected statutory standing for local governments under Section 2, but held that voting rights organizations

asserting organizational standing have statutory standing as "aggrieved persons" under the Voting Rights Act. *Veasey*, 29 F.Supp.3d at 902-09. And the legislative history of the VRA is in accord with *Veasey*. The Senate report accompanying the 1975 amendments to the Voting Rights Act, which added the "aggrieved person" language, states clearly that "[a]n 'aggrieved person' is *any person* injured by an act of discrimination. It may be an individual *or an organization* representing the interests of injured persons." S. Rep. No. 94-295, at 40, *reprinted in* 1975 U.S. Code Cong. & Admin. News 774, 806–807 (emphasis added). It is undisputed that both Organizational Plaintiffs brought this litigation to protect the interests of Black voters whose votes are diluted under the enacted redistricting plans. Accordingly, they are aggrieved persons and have "statutory standing" to bring suit under Section 2 of the Voting Rights Act, and the motion for summary judgment should be denied.

IV. CONCLUSION

For the reasons stated above, both the Individual Plaintiffs and the Organizational Plaintiffs have standing to bring their claims rooted in Section 2 of the Voting Rights Act and the Defendants' motion for summary judgment should be denied in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 27, 2023 this document was filed electronically on the Court's electronic case filing system. Notice of the filing will be served on all counsel of record through the Court's system.

/s/ I. Sara Rohani