UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, EDGAR CAGE, DOROTHY NAIRNE, EDWIN RENE SOULE, ALICE WASHINGTON, CLEE EARNEST LOWE, DAVANTE LEWIS, MARTHA DAVIS, AMBROSE SIMS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE ("NAACP") LOUISIANA STATE CONFERENCE, AND POWER COALITION FOR EQUITY AND JUSTICE, *Plaintiffs*, v. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana. *Defendant*.	Civil Action No. 3:22-cv-00211-SDD-RLB
EDWARD GALMON, SR., CIARA HART, NORRIS HENDERSON, TRAMELLE HOWARD, *Plaintiffs*, v. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana. *Defendant*.	Civil Action No. 3:22-cv-00214-SDD-RLB

PLAINTIFFS' REPLY IN FURTHER SUPPORT OF A PRELIMINARY INJUNCITON

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INTRODUCTION

Defendants' oppositions do not dispute the essential elements of a Section 2 violation under *Thornburg* v. *Gingles*, 478 U.S. 30 (1986): plaintiffs' illustrative map[1] is *more* compact than the enacted map by all relevant metrics, satisfies other traditional redistricting standards, and includes a second majority-Black district that usually allows for Black voters to elect their preferred candidates despite statistically demonstrated vote polarization by race. Defendants also largely do not contest plaintiffs' showing that the totality of circumstances, as shown by an analysis of the relevant Senate Factors, weighs strongly in favor of plaintiffs. Defendants' oppositions rest on mischaracterizing the applicable law or directing legally irrelevant quibbles at the robust evidence plaintiffs have submitted.

Defendants also argue that it is too late for a remedial map to be implemented in 2022. *See* Ardoin Opp. at 18–24 (citing *Purcell* v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam)). But *Purcell* is no obstacle here. There is ample time for the Court and defendants to do the crucial work of adopting and implementing a VRA-compliant redistricting map. The 2022 election is nearly six months away.[2] The first substantive deadline—the candidate qualifying period—is over eleven weeks away. And, while defendants argue that "there are looming candidate deadlines that must be met," AG Opp. at 22, and that a ruling requiring defendants to adopt a compliant map will "create election chaos," Ardoin Opp. at 23, defendants have made every effort to delay this proceeding. And little more than a month ago the legislative intervenors assured the state court in the related impasse litigation that "the candidate qualification period

[1] Unless otherwise specified, references to plaintiffs' illustrative map refer to the map in Mr. Fairfax's expert report submitted with the motion for preliminary injunction. Plaintiffs attach in Supp. Ex. 1 to John Adcock's Second Declaration a second illustrative map addressing certain arguments made by defendants and defendant-intervenors.

[2] Louisiana's redistricting process has followed its normal schedule and was unaffected by the Census data delay. For example, in 2011, the map was drawn in April 2011. *See* 2011 La. Sess. Law Serv. 1st Ex. Sess. Act 2 (Apr. 14, 2011).

could be moved back if necessary . . . without impacting voters," and that "[t]he election deadlines that actually impact voters do not occur until October 2022." *NAACP* v. *Ardoin*, No. C-716690, Legislative Intervenors' Exceptions at 9 (19th Judicial Cir., Mar. 3, 2022).[3]

The Section 2 violation is clear, and the equities favor a preliminary injunction.

ARGUMENT

I. Plaintiffs' illustrative map does not constitute a racial gerrymander

Defendants argue that plaintiffs fail to satisfy the *Gingles* preconditions because, they contend, plaintiffs' plans constitute a racial gerrymander under the *Shaw* line of cases, which forbid redistricting plans where "race was the predominant factor" in drawing the district lines. *Miller* v. *Johnson*, 515 U.S. 900, 916–918 (1995) (citing *Shaw* v. *Reno*, 509 U.S. 630, 636–37 (1993)). But the Supreme Court has never held that a plan submitted to establish the first *Gingles* precondition must be assessed under the *Shaw/Miller* standard. And the Fifth Circuit has expressly held that plaintiffs are *not* required to show that their proposed plans comply with *Miller* to satisfy the *Gingles* preconditions. *See Clark* v. *Calhoun Cty., Miss.*, 88 F.3d 1393, 1406–07 (5th Cir. 1996) (holding that "*Miller* and its progeny [did not] work a change in the first *Gingles* inquiry"); *Terrebonne Par. Branch NAACP* v. *Jindal*, 274 F. Supp. 3d 395, 428 (M.D. La. 2017), *rev'd on other grounds*, *Fusilier* v. *Landry*, 963 F.3d 447 (5th Cir. 2020). While *Miller* looks to the motivation of the mapmaker and asks whether race was the mapmaker's predominant motivation, the *Gingles* preconditions—consistent with the express

[3] In a further effort to delay this proceeding, the Attorney General states that he intends to "file an emergency motion to stay" this action and to "reset deadlines," and complains that the expedited schedule the Court established "works a material injustice on the State." State AG Opp. at 23 & n. 10. But plaintiffs commenced this action the very day that HB1 was enacted, and the Court's schedule is substantially similar to those set by courts in other redistricting litigation this cycle. *See, e.g.*, *Pendergrass* v. *Raffensberger*, No. 1:21-CV-05339-SCJ, ECF No. 96 (N.D. Ga. Feb. 28, 2022); *Singleton* v. *Merrill*, 2:21-cv-01291-AMM, ECF No. 45 (N.D. Ala. Nov. 23, 2021). And defendants have been on notice since at least October 2018—including from multiple letters from the organizational plaintiffs and others and statements by the Governor—that a map without two majority Black districts would violate the VRA. *See* Decl. of John Adcock, Ex. 22 at 1.

focus of the VRA on the impact of the challenged practice rather than its intent—ignore motivation and ask whether "geographic dispersal . . . is the *cause* of the black populations' disproportionately weak political strength." *Clark*, 88 F.3d at 1406–1407. The State attempts to distinguish *Clark* on the ground that the case was a trial on the merits rather than a preliminary injunction. But the procedural posture of the case is irrelevant to the Fifth Circuit's holding on the relationship between *Gingles* and the racial gerrymandering standard, which was based on its reading of Supreme Court precedent. *Clark* at 88 F.3d 1393, 1406–07.

In any event, defendants' assertion that race was the predominant motivation of plaintiffs and their experts is contrary to the evidence. This Court has held that race is "not the predominant or sole consideration" when a plaintiff's expert takes into account "traditional redistricting principles" rather than solely "try[ing] to maximize black voting age strength." *Terrebonne Par. Branch NAACP*, 274 F. Supp. 3d at 429 n.196. Here, plaintiffs' expert, Anthony Fairfax, prioritized traditional redistricting principles and has stated unequivocally that race was not the predominant factor in his analysis. Ex. ¶ 2; 6; Supp. Ex. 1 ¶ 28.[4] As he explains in his initial and supplemental reports, Mr. Fairfax accounted in particular for communities of interest based upon socioeconomic factors and the testimony of witnesses at roadshows and in the Legislature. Ex. 1 to John Adcock's Decl., ECF 41-2 ¶ 24; Supp. Ex. 1 ¶ 28. And it is undisputed that Mr. Fairfax's illustrative map is as good as or superior to HB 1 on the traditional redistricting principles identified the Legislature's Joint Resolution 21.[5]

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[4] Citations to "Supp. Ex." Refer to Exhibits to the Second Declaration of John Adcock.

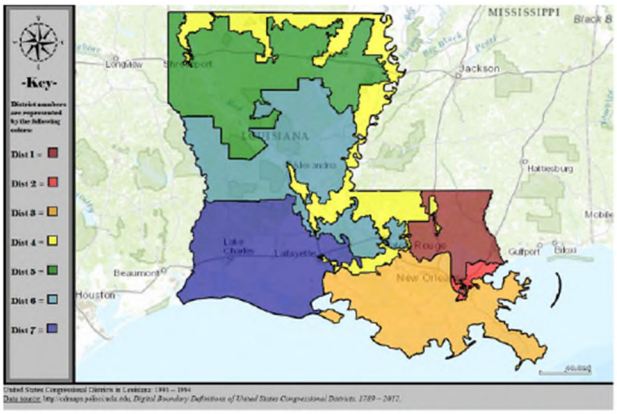
Supp. Ex. 1 refers to the supplemental expert report of Anthony Fairfax; Supp. Ex. 2 refers to the supplemental expert report of Dr. Lisa Handley; Supp. Ex. 3 refers to the supplemental expert report of Dr. R. Blakeslee Gilpin; and Supp. Ex. 4 refers to the supplemental expert report of Dr. Traci Burch.

[5] Plaintiffs also submit with Mr. Fairfax's accompanying rebuttal report a second illustrative map, App. 1, that is superior to HB 1 on all traditional redistricting principles. Supp. Ex. 1 ¶ 9, Table 1.

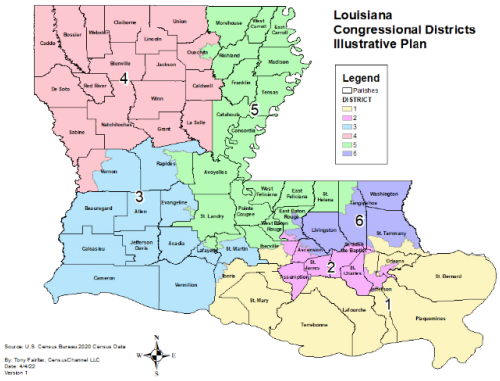
Moreover, even a redistricting plan in which race predominates will pass constitutional muster if it is narrowly tailored to achieve the compelling state interest of complying with the VRA. *See Theriot* v. *Jefferson Parish*, 185 F.3d 477, 488 (5th Cir. 1999): *Clark*, 88 F.3d at 1405–06. The illustrative plans are narrowly tailored because they do not use "race substantially more than is reasonably necessary" to remedy the Section 2 violation. *Clark*, 88 F.3d at 1407 (citation omitted); *see also Ga. State Conf. of NAACP* v. *Fayette Cnty. Bd. of Comm'rs.*, 118 F. Supp. 3d 1338, 1345 (N.D. Ga. 2015) (noting the court's conclusion that proposed maps to comply with Section 2 survived strict scrutiny). As defendants themselves acknowledge, the illustrative plans offer districts in which the Black voting age population is a bare majority, sufficient to provide an opportunity for Black voters to elect their candidates of choice but no more.

The legislative intervenors' reliance on a computer simulation that failed to produce a plan with two majority-Black districts using a subset of traditional redistricting principles that, they assert, are "race neutral," Leg. Opp. at 11, is misplaced. But neither the Supreme Court nor the Fifth Circuit has ever held, as defendants appear to argue, that there is no Section 2 violation unless an additional majority-Black district would be drawn at random through a supposedly race-neutral process. Leg. Opp. 11–12 (citing *Gonzalez* v. *City of Aurora, Ill.*, 535 F.3d 594, 600 (7th Cir. 2008)). On the contrary, it is well settled that race must be taken into account to some degree to remedy a Section 2 violation. *See Theriot* v. *Jefferson Parish*, 185 F.3d 477, 488 (5th Cir. 1999) (citing *Clark*, 88 F.3d at 1407). Moreover, the legislative intervenors' simulation ignores important redistricting factors that defendants themselves elsewhere emphasize, including retaining communities of interest. *See* Leg. Opp. at 12–13; Leg. Opp. Ex. C.

Defendants' reliance on the *Hays* case from the 1990s—which struck down Act 42's codification of congressional districts enacted in the 1990s that included a second majority-Black district— is similarly misplaced. *See, e.g.*, Leg. Opp. Ex. C. Plaintiffs' illustrative maps are wholly dissimilar to the maps at issue in *Hays* (as the maps below show). Nothing in plaintiffs' illustrative maps could be characterized, as the *Hays* court characterized the maps at issue there, as "project[ing] myriad diverticulae to encapsulate small sacs of otherwise widely dispersed black voters." *Hays* v. *State of La.*, 839 F. Supp. 1188, 1200 (W.D. La. 1993), *vacated sub nom, Louisiana* v. *Hays*, 512 U.S. 1230 (1994). On the contrary, plaintiffs' illustrative map scores higher than HB 1 on multiple geometric compactness scores as well as other traditional metrics. *Hays* cannot justify perpetuating racial vote dilution indefinitely.



Map of Act 42 from Jeffrey Sadow, Secretary Opp. to Preliminary Injunction, Ex. 1



Illustrative Map 1 from Anthony Fairfax, Mot. for Preliminary Injunction, Ex. 1

II. Plaintiffs have shown under *Gingles* I that an additional compact majority-Black district can be drawn that encompasses much of Baton Rouge and the Delta Parishes

To satisfy the first *Gingles* precondition, plaintiffs must show that the Black population in Louisiana is "sufficiently large and geographically compact to constitute a majority in a single-member district." *Gingles*, 478 U.S. at 50. *Gingles* I thus encompasses a numerosity and a compactness component. The numerosity inquiry asks only whether "minorities make up more

than 50 percent of the voting age population in the relevant geographic area." *Bartlett* v. *Strickland*, 556 U.S. 1, 17–18 (2009) (plurality op.). The compactness analysis comprises both mathematical compactness and respect for traditional redistricting principles. *Gonzalez* v. *Harris County, Tex.*, 601 Fed. Appx. 255, 259 (5th Cir. 2015) (citing *Perry*, 548 U.S. at 433). The Supreme Court has held that traditional redistricting principles include "maintaining communities of interest and traditional boundaries" because "the recognition of nonracial communities of interest reflects the principle that a State may not assume from a group of voters' race that they think alike, share the same political interests, and will prefer the same candidates at the polls." *Perry*, 548 U.S. at 433 (quotations omitted); s*ee also Miller*, 515 U.S. at 907 (enumerating Georgia's codification of traditional redistricting principles, including "requir[ing] single-member districts of equal population, contiguous geography, nondilution of minority voting strength, fidelity to precinct lines where possible, and compliance with §§ 2 and 5 of the [Voting Rights] Act"). Louisiana Joint Rule 21 adopts many of these traditional redistricting principles, in addition to the goal to avoid precinct splits and to retain prior voting district lines to the extent practicable. *See* Joint Rule 21.

The State argues that plaintiffs' illustrative plans fail the numerosity requirement because, in assessing whether their illustrative districts are majority Black, plaintiffs used the "Any Part Black" measure of the Black population, which includes everyone who identifies on the Census form as Black, whether or not they also identify as another race or ethnicity. State Opp. at 6–7. According to the State, plaintiffs should have excluded those individuals who identify as Black and another race, unless that other race happens to be white. The State concedes that, using Any Part Black, the Black Voting Age Population is over 50% in CD2 and

CD5 in Mr. Fairfax's illustrative plan,[6] but argues that had plaintiffs used its preferred, less-inclusive definition, illustrative CD2 would fall below 50% BVAP. *Id*.

But the Supreme Court has expressly approved the use of the "Any Part Black" definition in cases, such as this one, involving "an examination of only one minority group's effective exercise of the electoral franchise." *Georgia* v. *Ashcroft*, 539 U.S. 461, 474 n.1 (2003). The Court reasoned that "[i]n such circumstances, we believe it is proper to look at all individuals who identify themselves as black." *Id*. Consistent with *Ashcroft*, courts regularly rely on Any Part Black in analyzing voting claims. *See, e.g*., *Caster* v. *Merrill*, 2022 WL 264819, at *57 (N.D. Ala. Jan. 24, 2022); *Covington* v. *North Carolina*, 316 F.R.D. 117, 125 n.2 (M.D.N.C. 2016), *aff'd* 137 S. Ct. 2211 (2017) (Mem.); *Mo. State Conf. of NAACP* v. *Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d 1006, 1020 n.4 (E.D. Mo. 2016); *Fayette Cnty. Bd. of Comm'rs*, 118 F. Supp. 3d, 1343 n.8.[7] .

The State's argument that *Ashcroft* merely created an "exception" based on how the State of Georgia categorized race in its voter registration records, AG Opp. at 8–9, is made up out of whole cloth. In fact, the question at issue in *Ashcroft*, like the issue here, is which Census categories—not State voter registration records—are appropriate to determine the relevant Black population. *See Georgia v. Ashcroft*, 195 F. Supp. 2d 25, 78 (D.D.C. 2002)) (explaining that the 2000 census for the first time allowed for the selection of multiple racial and ethnic categories

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[6] Mr. Fairfax also reviewed the registered voters in Louisiana for each congressional district within the first and second illustrative maps; Black voters represented the majority of registered voters in CD 2 and CD 5 in both maps. Supp. Ex. 1 ¶ 16.

[7] Defendants describe their preferred definition as "DOJ Black" and contend that it is the definition adopted by the Department of Justice in published guidance regarding VRA Section 2. AG Opp. at 7–10. But, as one of their experts acknowledges, defendants' proffered definition of "DOJ Black" applies only "the first step" of the DOJ's multistep approach, Bryan Rep't at 18 ¶ 25, and the DOJ Guidance expressly cites *Georgia* v. *Ashcroft* as the binding law on this point. Ex. 1 ¶ 12; U.S. Dep't of Just., Guidance under Section 2 of the Voting Rights Act, 12–13 (Sept. 1, 2001) Defendants cite no cases, and we know of none, adopting their proposed use of "DOJ Black" in applying the *Gingles* factors. Nor do any of defendants' experts offer an opinion that the DOJ Black definition is appropriate, much less more appropriate than "Any Part Black."

and that Georgia had opted to use the broadest definition), *vacated*, 539 U.S. 461 (2003). Defendants offer no basis for ignoring the self-identification of Louisiana citizens who identify as Black and another racial or ethnic category (unless that other category happens to be white). The relevant Black population should not "exclude Black voters who also identify with another race when there is no evidence that these voters do not form part of the politically cohesive group of Black voters." *Georgia NAACP*, 118 F. Supp. at 1344. *Fayette Cty. Bd. of Comm'rs*, 118 F. Supp. at 1344 n.8; *Singleton* v. *Merrill*, No. 2:21-CV-1291-AMM, 2022 WL 265001, at *66 (N.D. Ala. Jan. 24, 2022) (granting injunction without disputing plaintiffs' reliance on the Any Part Black definition), *order clarified*, No. 2:21-CV-1291-AMM, 2022 WL 272637 (N.D. Ala. Jan. 26, 2022), *stayed pending appeal sub nom.*, *Merrill* v. *Milligan*, 142 S. Ct. 879 (2022).[8] In any event, Mr. Fairfax's accompanying report describes a second illustrative map that includes two majority Black congressional districts even using defendants' unduly narrow definition. Supp. Ex. 1 ¶ 14, 17.

Plaintiffs' illustrative maps also comport with traditional redistricting principles. *See Gonzalez*, 601 Fed. Appx. at 259 (citing *Perry*, 548 U.S. at 433). Louisiana Joint Rule 21(E) identifies the traditional redistricting principles that the Louisiana legislature has recognized as applicable to congressional redistricting. By those principles, the illustrative plans easily satisfy the *Gingles* I compactness analysis.

Indeed, neither defendants nor their experts dispute that plaintiffs' maps equal or beat HB 1 on all objective traditional redistricting principles, including population balance, mathematical

[8] As shown in the accompanying rebuttal declaration of Professor Gilpin, the Any Part Black approach is also consistent with the way in which the State of Louisiana itself historically identified its Black citizens. Ex. 3. It is darkly ironic that, while the State for many decades adopted a broad definition of Black in an effort to thwart equal citizenship, it now seeks to perpetuate dilution of Black votes by urging the Court to adopt an unduly narrow definition.

measures of compactness, and the number of parish and precinct splits. *See* Ex. 1 to John Adcock's Decl., ECF 41-2 ¶ 3; Supp. Ex. 1 ¶ 9, Table 1.[9] Instead, they argue that plaintiffs' illustrative maps fail to maintain communities of interest based on cherry-picked and legally unsupported assertions about the relevant communities of interest in this State. For example, the State Intervenors' expert identifies communities of interest based on the Louisiana Regional Folklife Program, whose mission is to archive Louisiana folk traditions for "use by the public and cultural tourism," not to catalogue communities of interest for redistricting or other public policy purposes.[10] Defendants cite no case holding that these kinds of regional maps have any bearing on the communities-of-interest inquiry. By contrast, plaintiffs' expert relied on testimony from individual Louisianans during redistricting hearings that the Legislature conducted purportedly for the very purpose of collecting input from members of Louisiana's diverse communities. Supp. Ex. 1 ¶¶ 51–55; Ex. 1 to John Adcock's Decl., ECF 41-2 ¶ 24.

Defendants also focus on HB 1's core retention (i.e., the retention of voters in the same districts as under the prior congressional map). Leg. Opp. 4–5, 13. The Legislature's own Joint Rule 21 does not identify core retention as a relevant factor for congressional redistricting, and for that reason alone, this issue is irrelevant. Moreover, while core retention and the related concept of incumbent protection are sometimes recognized as traditional redistricting principles, the Supreme Court has expressed skepticism of these considerations as a traditional redistricting principle. *See, e.g.*, *Ala. Legis. Black Caucus* v. *Alabama*, 575 U.S. 254, 274 (2015) ("[C]ore preservation . . . is not directly relevant to the origin of the new district inhabitants"); *League of United Latin Am. Citizens (LULAC)* v. *Perry*, 548 U.S. 399, 441 (2006) ("[I]ncumbency

[9] In addition, Louisiana Joint Rule 21(E) identifies the redistricting principles that the Louisiana legislature has recognized as applicable to congressional redistricting. By those principles, the illustrative plans easily satisfy the *Gingles* I compactness analysis.

[10] https://www.nsula.edu/regionalfolklife/regions/default.htm

protection can take various forms, not all of them in the interests of the constituents"). In any event, as courts have recognized, "a significant level of core disruption . . . is to be expected when the entire reason for the remedial map is to draw a second majority-minority district that was not there before." *Singleton*, 2022 WL 265001, at *66.

III. Plaintiffs have shown under *Gingles* II/III that Black voters in Louisiana are cohesive, and that white voters vote as a bloc to defeat their candidate of choice

To satisfy the second and third *Gingles* preconditions, plaintiffs must show that Black Louisianans are "politically cohesive" and that the "white majority votes sufficiently as a bloc" to enable it usually to defeat the candidate preferred by Black voters. *Thornburg* v. *Gingles*, 478 U.S. 30, 51(1986). Neither defendants nor any of their experts contest Dr. Handley's analysis demonstrating that these two preconditions are met and as such that voters are highly racially polarized in Louisiana. *See* Supp. Ex. 2 at 1–2; Ex. 2 to John Adcock's Decl., ECF 41-3 at 7–9.

Defendants argue that the Court should disregard the compelling and undisputed evidence of racial polarization because, they contend, plaintiffs have not shown that the polarization is due to race rather than partisanship. *E.g.*, AG Opp. 17. In *Gingles*, the Supreme Court explained that, in the Section 2 context, "[i]t is the *difference* between the choices made by blacks and whites—not the reasons for that difference—that results in blacks having less opportunity than whites to elect their preferred representatives." 478 U.S. at 63 (emphasis in original). Moreover, the Fifth Circuit has made clear that the burden of showing that factors other than race explain the failure of Black voters to elect their candidates of choice rests with the defendants. *See Teague* v. *Attala County*, 92 F.3d 284, 290–291 (5th Cir. 1996); *Houston* v. *Lafayette County*, 56 F.3d 606, 612–13 (5th Cir. 1995). As the court held in *Teague*, it is error to "plac[e] the burden on plaintiffs to disprove that factors other than race affect voting patterns. . . .

Such a showing is for the defendants to make. The lack of evidence in the record on this point favors the plaintiffs, not the defendants." *Teague*, 92 F.3d at 290–91.

Defendants do not carry their burden. As shown in the accompanying rebuttal reports of Dr. Handley and Dr. Burch, defendants' argument ignores the critical role that race plays in explaining voters' partisan affiliations and candidate preferences. *See* Supp. Ex. 2 at 2–5; Supp. Ex. 4. Extensive social science evidence—which defendants and their expert, Dr. Alford, wholly ignore—shows that, consistent with what common sense would suggest, race and racial attitudes have primarily shaped partisan affiliation in the South, and specifically in Louisiana, since the Civil Rights era, and has only strengthened in recent years.[11] One of defendants' affiants, Mr. Watson, cites voter registration data showing a substantial decline in Louisiana voters registered as Democrats in the past 20 years. ECF 101-3 ¶ 5, Ex. A. But the same data, and other social science evidence, shows that the decline in Democratic registration is almost entirely driven by changes in the party registration of white voters. Supp. Ex. 4 at 2–4. In sum, defendants' contention that party affiliation rather than race explains the stark racial polarization found by Dr. Handley ignores the strong evidence that race and racial attitudes drive partisanship and voter choice.

Defendants also do not dispute Dr. Handley's conclusion that in Mr. Fairfax's original illustrative map the two majority Black districts would in all or almost all cases result in the election of candidates preferred by Black voters. Ex. 2 to John Adcock's Decl., ECF 41-3 at 12–13. Nor can they dispute her conclusion that the same is true of Mr. Fairfax's second illustrative map. *See* Supp. Ex. 2 at 5–6. While the legislative intervenors suggest that the Black

[11] Dr. Alford also makes no attempt to explain why there was a much higher level of white support for John Bel Edwards, a white Democrat, in 2015 and 2019, than any Black Democrat running for statewide office in Louisiana in the elections included in Tables 3 and 4 of Dr. Alford's report. *See* Supp. Ex. 2 at n.4.

community might be "better served" with "one congressional majority-minority district of a healthy BVAP of about 58%, as the enacted plan provides" rather than "two that barely qualify," Leg. Opp. at 18,[12] none of defendants' experts provides any analysis showing that Black voters would be unable to reliably elect their candidates of choice in either CD2 or CD5 under plaintiffs' illustrative plans. Indeed, the legislative intervenors concede that CD2 and CD5 in plaintiffs' illustrative map would reliably enable Black voters in both districts to elect their candidates of choice even if the voting age population in both districts was substantially *less* than 50% Black. *Id*. at 15–16.

IV. The totality of circumstances further demonstrates a Section 2 violation

Defendants do not seriously dispute plaintiffs' showing that, under the applicable "Senate Factors," the totality of the circumstances strongly support the conclusion that the enacted congressional map violates Section 2.

The legislative intervenors assert that only "recent evidence of discrimination" is relevant to the Senate Factor 1 analysis, and older instances of discrimination should be afforded "slight weight." *See* Leg. Opp. at 20 (citing *Lopez* v. *Abbott*, 339 F. Supp. 3d 589, 612 (S.D. Tex. 2018)). But the court in *Lopez* recognized that the issue is not recent discrimination, but whether "vestiges of [voting rights] discrimination *continue to be felt* in racial disparities in socioeconomic conditions, which depress political participation among minority voters." *Lopez*, 339 F. Supp. 3d 589, 611 (S.D. Tex. 2018) (emphasis added). Courts in Louisiana have similarly held that even evidence of a decline in explicit discrimination "does not tell the whole story . . . Louisiana and its subdivisions have a long history of using certain electoral systems that have the

[12] Moreover, the Legislative Defendants' concession that "it is unclear" whether a 58% BVAP is necessary to provide Black voters an equal opportunity to elect candidates of their choice simply highlights that they did not have the requisite "strong basis in evidence" to support their choice to pack Black voters into CD2. *See Ala. Legis. Black Caucus*, 575 U.S. at 278–79.

effect of diluting the black vote." *Terrebonne Parish Branch NAACP*, 274 F. Supp. 3d at 399. The Legislature's enacted district map was "not created in a vacuum." *Cf. id.*; *St. Bernard Citizens For Better Gov't* v. *St. Bernard Par. Sch. Bd.*, No. 02-2209, 2002 WL 2022589 at *9 (E.D. La. Aug. 26, 2002) (recognizing "the persistent, and often violent, intimidation visited by white citizens upon black efforts to participate in Louisiana's political process."); *Hall* v. *Louisiana*, 108 F. Supp. 3d 419, 440 (M.D. La. 2015) (finding "a history of de jure and de facto racial segregation and discrimination in Baton Rouge").

Thus, Senate Factor 1 should not be given only "slight weight," as defendants claim. Leg. Opp. 20 (citing Lopez, 339 F. Supp. 3d at 612 (affording "slight weight" only because of the lack of specific history of discrimination with respect to "establishing or maintaining the multimember nature of voting for the State's high courts.")). Dr. Gilpin's report describes the history of discriminatory redistricting practices in Louisiana. See Ex. 3 to John Adcock's Decl., ECF 41-2 at 37–39, 41–44. More generally, Dr. Burch's expert report describes in detail the impacts of Louisiana's history of racism on every aspect of the lives of Black Louisianans, including health and educational disparities, persistent residential segregation, and reduced economic prospects. See Ex. 4 to John Adcock's Decl., ECF 41-2 at 4–19; . This evidence clearly supports a showing that a "lower standard of living hinders their ability to participate effectively in the political process," Fairley v. Hattiesburg, Miss., No. 2:06-cv-167-KSMTP, 2008 WL 3287200, at *99 (S.D. Miss. Aug. 7, 2008), aff'd, 584 F.3d 660 (5th Cir. 2009).

V. The Equities weigh heavily in plaintiffs' favor

Defendants maintain that this Court cannot issue a preliminary injunction because "federal district courts ordinarily should not enjoin state election laws in the period close to an election." Leg. Opp. at 23 (quoting *Merrill*, 142 S. Ct. at 879 (Kavanaugh, J. concurring) (citing *Purcell*, 549 U.S. at 1 (per curiam))). But the principle that federal courts "should ordinarily not

alter . . . election rules o*n the eve* of an election," *Republican Nat'l Comm.* v. *Dem. Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (emphasis added), when voters may become confused and stay away from the polls, *Purcell* v. *Gonzalez*, 549 U.S. 1, 4–5 (2006), has no application here.

Defendants argue that May 13 is too late to issue an injunction. But the 2022 election is in November, nearly six months away. The first real deadline—the candidate qualifying period from July 20–22, 2022—is over 11 weeks away. Voters will not have any certainty about who will appear on their ballots until after this date. And the legislative intervenors assured the state court in the prior malapportionment matter that "the candidate qualification period could be moved back if necessary . . . without impacting voters," and that "[t]he election deadlines that actually impact voters do not occur until October 2022, like the deadlines for voter registration (October 11, 2022 for in-person, DMV, or by mail, and October 18, 2022 for online registration) and the early voting period (October 25 to November 1, 2022)." *Bullman* v. *Ardoin*, Exceptions of Leg. Intervenors, Nos. C-716690, C-716837 (La. Dist. Ct.). There is ample time for this Court to consider and rule upon plaintiffs' claims, which address the fundamental rights of Louisiana citizens to make their voices heard.

Federal courts, including the Supreme Court, have endorsed changes to voting districts closer to the relevant election dates than the proceedings here would require. Earlier this year, in *Wisconsin Legislature* v. *Wisconsin Elections Comm'n*, the Supreme Court struck down Wisconsin's state legislative plans, approved by the State Supreme Court, five months before the state primary. 142 S. Ct. 1245 (2022). Likewise, in *Thomas* v. *Bryant*, 938 F.3d 134, 150 n.67 (5th Cir. 2019), *vacated on other grounds*, 961 F.3d 800 (5th Cir. 2020), the Fifth Circuit held that an injunction affecting a state election would not be "unduly disruptive" in part by reading prior cases to permit such changes until four months before an election, if not sooner. *See also*

Patino v. *City of Pasadena*, 229 F. Supp. 3d 582, 589 (S.D. Tex. 2017) (less than 100 days until start of early voting), *appeal denied*, 677 F. App'x 950 (5th Cir. 2017); *Gonidakis* v. *LaRose*, No. 2:22-CV-0773, 2022 WL 1175617, at *2–3 (S.D. Ohio Apr. 20, 2022) (finding that 66 days is the minimum time required to implement new state legislative maps). *Cf. Merrill*, 142 S. Ct. at 879 (2022) (Kavanaugh, J., concurring) (supporting stay under *Purcell* because only seven weeks remained until primary election voting began).[13]

CONCLUSION

For the foregoing reasons and those set forth in plaintiffs' opening memorandum and other submissions, plaintiffs' motion for a preliminary injunction should be granted.[14]

Respectfully submitted,

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[13] Finally, the State argues that Section 2 of the VRA does not confer a private right of action. But only a single district court has ever endorsed that conclusion, *Arkansas State Conf. NAACP* v. *Arkansas Bd. of Apportionment*, No. 4:21-CV-01239-LPR, 2022 WL 496908, at *9–24 (E.D. Ark. Feb. 17, 2022), and that decision is currently on appeal. *See id.* ECF 103. In contrast, multiple courts have either expressly rejected such arguments or granted relief to private plaintiffs in actions under Section 2. *See Singleton*, 2022 WL 265001, at *79 (collecting cases).

[14] Plaintiffs earlier filed a motion requesting the Court's permission to file a brief of no more than 15 pages. As of time this reply brief was filed, the Court had not yet ruled on the motion. In the event the Court denies the motion, Plaintiffs request an opportunity to file a revised brief of not more than 10 pages.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system which provides electronic notice of filing to all counsel of record, on this 2nd Day of May, 2022.

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