Sent via email

December 14, 2021

Senate and Governmental Affairs Committee
Louisiana State Senate
P.O. Box 94183
Baton Rouge, LA 70804
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House and Governmental Affairs Committee
Louisiana House of Representatives
P.O. Box 94062
Baton Rouge, LA 70804
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Re: Response to Chair Stefanski's November 22 Press Conference Remarks Concerning Congressional Redistricting

Dear Chair Stefanski, Chair Hewitt, and Other Members of the House and Senate Governmental Affairs Committees:

The NAACP Legal Defense and Educational Fund, Inc., the ACLU Voting Rights Practice, American Civil Liberties Union of Louisiana, Louisiana Justice Institute, Louisiana State Conference of the NAACP, and Power Coalition for Equity and Justice write in response to comments made by Chair Stefanski concerning congressional redistricting during his November 22, 2021, press conference. Chair Stefanski expressed a number of concerns about the illustrative congressional maps submitted by a coalition of organizations, including our organizations, on October 18, 2021 (the "Coalition maps"),[1] which we have reattached as **Appendix 1** of this letter. In particular, Chair Stefanski articulated potential objections to drawing a second district

[1] *See LDF Sends Letter to Louisiana House and Senate Governmental Affairs Committees on their Obligation to Comply with Section 2 of the Voting Rights Act During Redistricting* (Oct. 18, 2021), https://www.naacpldf.org/press-release/ldf-sends-letter-to-louisiana-house-and-senate-governmental-affairs-committees-on-their-obligation-to-comply-with-section-2-of-the-voting-rights-act-during-redistricting/.

Hearing Exhibit
PR-81
3:22-cv-00211-SDD-RLB

comprised of a majority of Black voters ("majority-Black opportunity district"), which this body has the occasion to do in the 2022 legislative session.[2] These comments misinterpret federal and state law and misconstrue the Coalition maps, and we send this letter to correct those inaccuracies and provide further guidance on the Committees' obligation to comply with Section 2 of the Voting Rights Act and the Fourteenth Amendment to the U.S. Constitution.

First, Chair Stefanski contended that the districts "in the maps [he has] seen submitted to [him]" may not be "effective" based on the minority population and voting-age population in these districts.[3] Chair Stefanski suggested that the majority-Black opportunity districts proposed in the Coalition maps would not allow a candidate preferred by Black voters to prevail due to an insufficient number of Black voters in those districts.

Chair Stefanski's concerns are unfounded and reflect an incomplete analysis of the Coalition maps. We conducted an analysis of recompiled election results and determined that the two proposed majority-Black opportunity districts in the Coalition maps (CD2 and CD5) would reliably perform to provide an opportunity for a candidate preferred by Black voters to prevail.[4]

Based on this analysis, the candidate preferred by Black voters clearly would have the opportunity to prevail in CD2 as drawn in all seven of the Coalition maps (each of which include some portion of the current Congressional District 2), with vote shares for the Black-preferred candidate generally ranging between 62.2% and 68.8%. This analysis also showed that the Black candidate of choice would prevail in CD5 in each of the Coalition maps, the majority of the time—in some cases by significant margins—although the elections would be more competitive.[5] These results demonstrate that it is possible to draw two majority-Black opportunity districts that

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[2] The only maps submitted to the Committees with two majority-Black opportunity districts were the Coalition maps submitted on October 18, 2021. *See* Appendix 1.

[3] Chairman Stefanski made these remarks as a guest speaker at the Press Club of Baton Rouge. A recording of the press conference can be found here: https://www.youtube.com/watch?v=SuquGa6rJI8.

[4] Our analysis was performed by taking vote totals (or shares) from a selection of recent racially contested elections (i.e., elections featuring at least one Black and one white candidate) in Louisiana and calculating the vote totals for the candidate preferred by Black voters had the election been run under each of the Coalition maps.

[5] For example, Gwen Collins-Greenup, a Black woman running against a white male, was the candidate of choice of Black voters for the statewide run-off election for Secretary of State in December of 2018. In 2018, the Secretary of State run-off was the only statewide race on the ballot and there were no federal office run-offs that year. The recompiled election results from the Secretary of State run-off show that the vote share for Collins-Greenup in CD2 of the Coalition maps ranged between 63.8% and 70.6%; and the vote share for Collins-Greenup in CD5 of the Coalition maps ranged from 53.6% to 61%.

would be effective and would comply with Section 2 by providing Black voters with an equal opportunity to elect candidates of their choice.

Second, Chair Stefanski stated that the "some of the [proposed] districts look very similar to districts that have been struck down in the past as racial gerrymanders." He specifically referred to two districts—"one that's commonly referred to as the 'Zorro' district and one that's commonly referred to as the 'slash' district"—that were struck down by the courts.[6]

Chairman Stefanski's statements are inaccurate and lead to erroneous conclusions about the legality of two majority-Black opportunity districts in Louisiana. Chairman Stefanski is seemingly referring to the *Hays v. Louisiana*, 936 F. Supp. 360 (W.D. La. 1996), cases. The maps singled out in *Hays* were drawn nearly 30 years ago (following the 1990 census) and were struck down because they "cavalierly disregard[ed]" the traditional redistricting principles that are usually considered during the redistricting process, including compactness and respect for political subdivisions.[7]

In contrast to the maps in *Hays*, the seven Coalition maps illustrate different ways to achieve two majority-Black opportunity districts while also considering traditional redistricting principles. Each of the seven Coalition maps is more compact than the current congressional map on at least two of the three widely recognized statistical measures of compactness.[8] In addition, while the "Zorro" map in the *Hays* cases was rejected in part for splitting parishes 28 times, the Coalition maps demonstrate that it is possible to draw a map using 2020 Census data that splits relatively few parishes.[9] Plan A1, for instance, splits parishes only 14 times, which is even better than the current map, which splits parishes 15 times.

In sum, the *Hays* cases do not foreclose the creation of a second majority-Black opportunity district in Louisiana. Indeed, as recently as 2019, a federal court held that a Section 2 challenge to Louisiana's current congressional districts—alleging, among other things, that an additional majority-minority district could be developed—was

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[6] Although Chair Stefanski said that these maps were struck down in the "early 2000s," he appears to be referring to two maps struck down in *Hays v. Louisiana* following the 1990 Census. The Z-shaped, "Zorro" district was declared unlawful in *Hays v. Louisiana*, 839 F. Supp. 1188 (W.D. La. 1993) (hereinafter *Hays I)*. The "slash" district, or "inkblot" district, proposed after the Zorro district was rejected by the court, was also struck down in *Hays v. Louisiana*, 862 F. Supp. 119 (W.D. La. 1994) (hereinafter *Hays II*), and again in *Hays v. Louisiana*, 936 F. Supp. 360 (W.D. La. 1996) (hereinafter *Hays III*).

[7] *Hays I*, 839 F. Supp. at 1200–01. Instead of adhering to these principles, the court found that the map creators "concentrated virtually exclusively on racial demographics and considered essentially no other factor" in drawing up an additional majority-minority congressional district. *Hays III*, 936 F. Supp. at 368. Moreover, it should be noted that the *Hays* line of cases were racial gerrymandering cases, not Section 2 challenges.

[8] See Compactness Reports for Illustrative Maps (on file with LDF).

[9] *Hays I*, 839 F. Supp. at 1200-01.

credible enough to survive a motion to dismiss.[10] Instead, the *Hays* cases reinforce the importance of drawing districting plans that carefully evaluate whether districts can be drawn in which the minority population is sufficiently large and geographically compact to constitute a majority and respecting traditional redistricting principles to the extent possible to comply with Section 2 of the Voting Rights Act.

Third, Chair Stefanski asserted that there has been "a lot of talk" among Committee members about preserving the "current congressional configuration" by "tweaking around the edges," in part because the current congressional map was "precleared" by the Department of Justice ("DOJ") under Section 5 of the Voting Rights Act. Chair Stefanski claimed that because the DOJ precleared the current maps, "we know this configuration is legal."

Chair Stefanski is incorrect as a matter of law. DOJ preclearance determinations are based on compliance with Section 5 of the Voting Rights Act, *not* compliance with Section 2. The two provisions use different legal standards, and the fact that a map was precleared under Section 5 does not necessarily mean it would comply with Section 2. Section 5 prohibits "retrogressive" maps that weaken the ability of Black voters to participate in the democratic process when compared to a previous map.[11] In contrast, Section 2 prohibits maps that dilute minority voting strength based on the U.S. Supreme Court's framework in *Gingles*, *regardless* of whether the map is retrogressive when compared to a previous map.[12]

The Supreme Court has expressly "refuse[d] to equate a Section 2 vote dilution inquiry with the Section 5 retrogression standard."[13] Therefore, maps that meet preclearance standards may nevertheless violate Section 2. Indeed, the Supreme Court and numerous federal courts have struck down district maps as violating Section 2 even when those maps were precleared by the DOJ under Section 5.[14] For that matter, the fact that a federal court denied in 2019 a motion to dismiss a Section 2 claim again

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[10] *Johnson v. Ardoin*, No. 18-cv-00625, 2019 WL 2329319 (M.D. La. May 31, 2019).

[11] *Thornburg v. Gingles*, 478 U.S. 30 (1986); *see also* United States Department of Justice, *Guidance under Section 2 of the Voting Rights Act*, https://www.justice.gov/opa/pressrelease/file/1429486/download.

[12] The October 18 letter included a more detailed overview of the *Gingles* framework used by courts to prove a Section 2 violation.

[13] *See Georgia* v. *Ashcroft*, 539 U.S. 461 (2003).

[14] *See, e.g.*, *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 480 (2006) (holding that Texas's congressional redistricting plan violated Section 2 of the VRA, notwithstanding the fact that the plan had been precleared by DOJ under Section 5 following the 2000 Census); *Benavidez v. Irving Indep. Sch. Dist.*, No. 3:13-CV-0087-D, 2014 WL 4055366, at *19 (N.D. Tex. Aug. 15, 2014) (same, noting that "the Supreme Court has repeatedly recognized that § 2 and § 5 have different aims with different requirements, and that a change that is permissible under § 5 may in fact violate § 2"); *St. Bernard Citizens For Better Gov't v. St. Bernard Par. Sch. Bd.*, No. CIV.A. 02-2209, 2002 WL 2022589, at *2 n.2 (E.D. La. Aug. 26, 2002) (declaring a redistricting plan invalid under Section 2, notwithstanding the fact that the plan had been precleared by DOJ).

Louisiana's *current* map should make it clear to the Committees that preclearance of the previous map does not insulate the Committees from the requirements of Section 2.[15]

Moreover, the interest in "tweaking around the edges" of the current congressional configuration disregards its obligations to comply with Section 2 of the Voting Rights Act. As previously explained in the October 18 letter, a new congressional map that includes only one majority-Black opportunity district likely violates Section 2 because it would deprive Black voters in Louisiana—who represent approximately one-third of the state's voting age-population—of an opportunity to elect the candidate of their choice in five of Louisiana's six congressional districts.

Fourth, Chair Stefanski questioned whether District 2 could remain comprised of a majority of Black voters without including Baton Rouge. Specifically, in response to a reporter who correctly noted that District 2 could "still be a majority-minority district without Baton Rouge," Chair Stefanski asked, "could it?" and added, "I would have to see those numbers and I'd love if you submitted a map."

Chair Stefanski's concerns are unfounded. As demonstrated in each of the seven Coalition Maps, it is possible to remove Baton Rouge from District 2 and keep District 2 a majority-Black district, while also drawing a second majority-Black opportunity district that includes the majority of Baton Rouge's predominantly Black communities. In each of the seven Coalition maps, CD2 and CD5 *both* have a Black voting-age population (BVAP) over 50%.

Fifth, Chair Stefanski expressed the Committee's commitment to preserving whole precincts. However, state law does not require preservation of whole precincts. House Concurrent Resolution 90, which sets forth redistricting principles for the Committee's consideration, merely advises preservation of whole precincts "to the extent practicable."[16] In any event, compliance with the federal Voting Rights Act and the U.S. Constitution must take precedence over state-level redistricting goals, such as preserving whole precincts.[17] Moreover, the constitutional requirement that congressional districts must be drawn with "precise mathematical equality"[18] makes it

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[15] *See Johnson*, 2019 WL 2329319 at *4.

[16] HCR 90, Joint Rule No. 21(G).

[17] *See Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 426 (M.D. La. 2017), *rev'd on other grounds sub nom. Fusilier v. Landry*, 963 F.3d 447 (5th Cir. 2020) ("While respect for existing political boundaries is also a valued traditional districting method, election precincts are not such important political boundaries that they should negate a districting proposal, particularly where other key districting principles are obeyed.") (quoting *United States v. Vill. of Port Chester*, 704 F. Supp. 2d 411, 439–40 (S.D.N.Y. 2010)); *Georgia State Conf. of NAACP v. Fayette Cty. Bd. of Comm'rs*, 950 F. Supp. 2d 1294, 1312 (N.D. Ga. 2013) *rev'd on other grounds*, 775 F.3d 1336 (11th Cir. 2015) (same).

[18] *Karcher v. Daggett*, 462 U.S. 725, 730–31 (1983) (holding that congressional districts must be mathematically equal in population, unless a deviation from that standard is necessary to achieve a legitimate state objective).

virtually impossible to draw a congressional map without splitting at least some precincts. Splitting precincts may be necessary to comply with federal and state law, and we urge you to prioritize compliance with the Voting Rights Act and the U.S. Constitution as you redraw the congressional map.

* * *

As explained in the October 18, 2021, letter, the state legislature has an affirmative obligation to ensure its compliance with the Voting Rights Act, including considering whether it is necessary to develop an additional majority-Black opportunity district to provide Black voters with an equal opportunity to elect candidates of their choice and to participate in the political process in congressional elections in Louisiana.

We are happy to discuss our concerns further and to provide assistance to help ensure the Committees develop a redistricting plan that satisfies its obligations under the Voting Rights Act, U.S. Constitution, and other requirements and considerations. Please feel free to contact LDF Redistricting Counsel Michael Pernick at (917) 790-3597 or by email at mpernick@naacpldf.org with any questions or to discuss these issues in more detail.

Sincerely,

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NAACP Legal Defense and Educational Fund, Inc. ("LDF")

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that prohibit voter discrimination, intimidation, and suppression and increase access to the electoral process.

American Civil Liberties Union Foundation

For 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties guaranteed by the Constitution and laws of the United States. Whether it's ending mass incarceration, achieving full equality for the LGBT community, advancing racial justice, establishing new privacy protections for our digital age, or preserving the right to vote or the right to have an abortion, the ACLU takes up the toughest civil liberties and civil rights cases and issues to defend all people from government abuse and overreach. With more than one million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, gender identity or expression, age, disability, national origin, and record of arrest or conviction.

American Civil Liberties Union of Louisiana

The ACLU of Louisiana has worked to advance and preserve the individual rights and liberties guaranteed by the Constitution and laws of the United States and the State of Louisiana since 1956. The organization is part of a nationwide network of ACLU affiliates that fight tirelessly in all 50 states, Puerto Rico, and Washington, D.C.

Louisiana Justice Institute

Louisiana Justice Institute is a non-profit civil rights legal advocacy organization and law firm that fosters and supports social justice campaigns across Louisiana to protect the rights of Black communities. Since its founding in 2007, LJI has been involved in numerous campaigns, impact litigation, and social justice advocacy involving – but not limited to – immigrant rights, housing rights, education rights (including special education advocacy and litigation), voting rights, and environmental litigation.

Louisiana NAACP State Conference

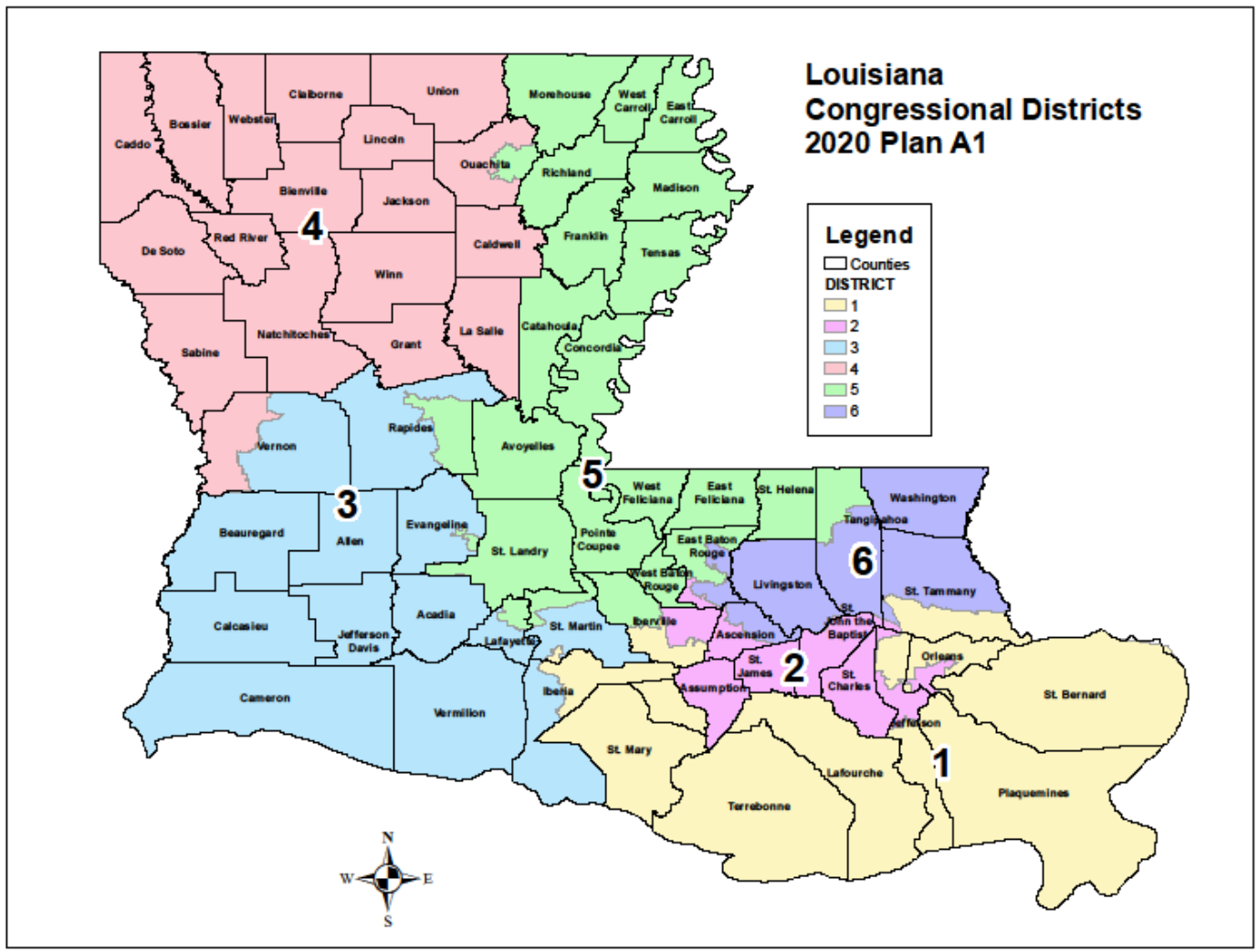
Louisiana State Conference of the National Association for the Advancement of Colored People (the "Louisiana NAACP State Conference") is a state subsidiary of the National Association for the Advancement of Colored People, Inc. For decades, the Louisiana NAACP State Conference has worked towards its mission to ensure the political, educational, social, and economic equality of all persons and to eliminate race-based discrimination.

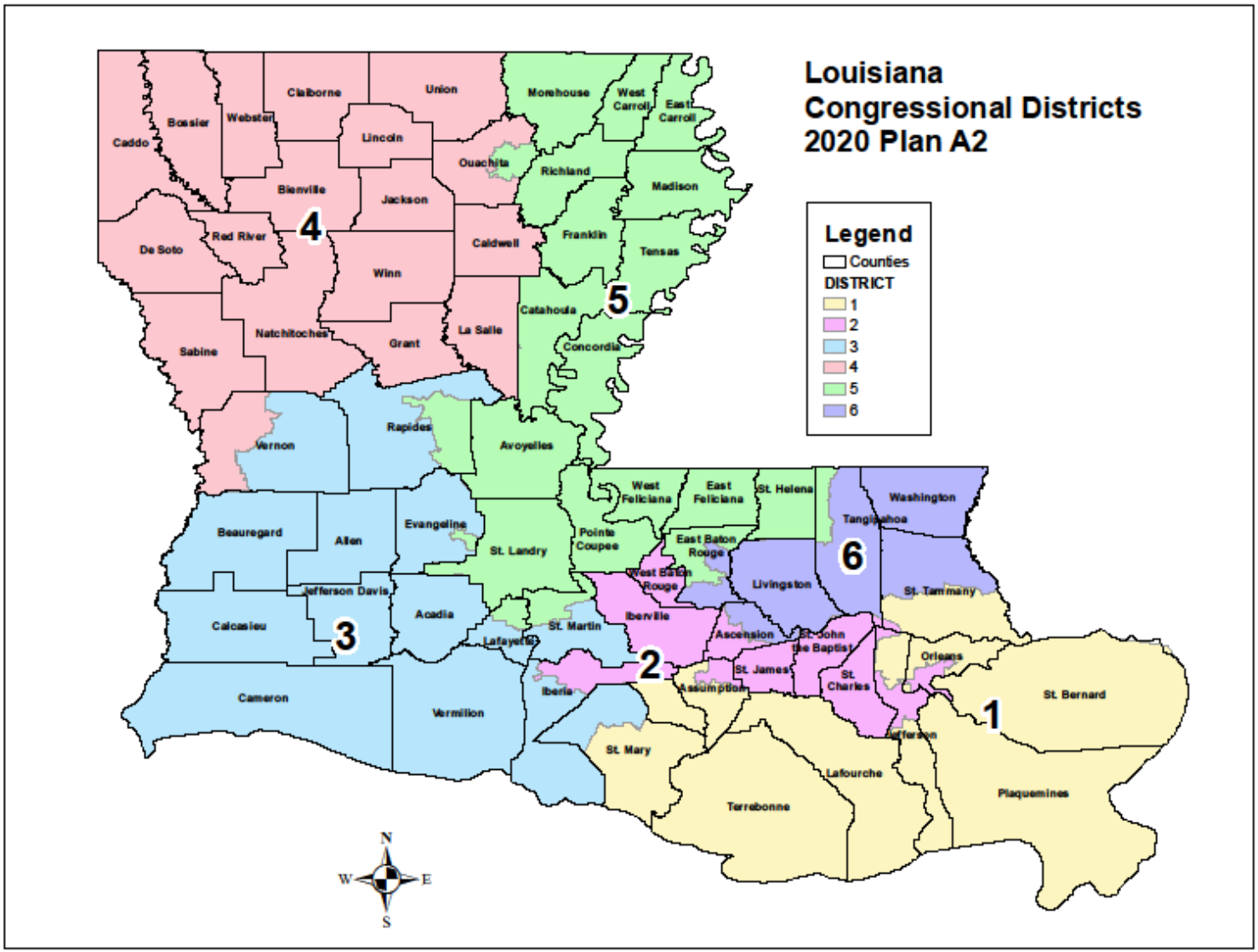
Power Coalition for Equity and Justice

The Power Coalition for Equity and Justice works to build voice and power in traditionally ignored communities. We are a coalition of groups from across Louisiana whose mission is to organize in impacted communities, educate and turn out voters, and fight for policies that create a more equitable and just system in Louisiana.

APPENDIX 1

Seven Illustrative Maps (A1 – A7) with Two Majority-Minority Opportunity Districts

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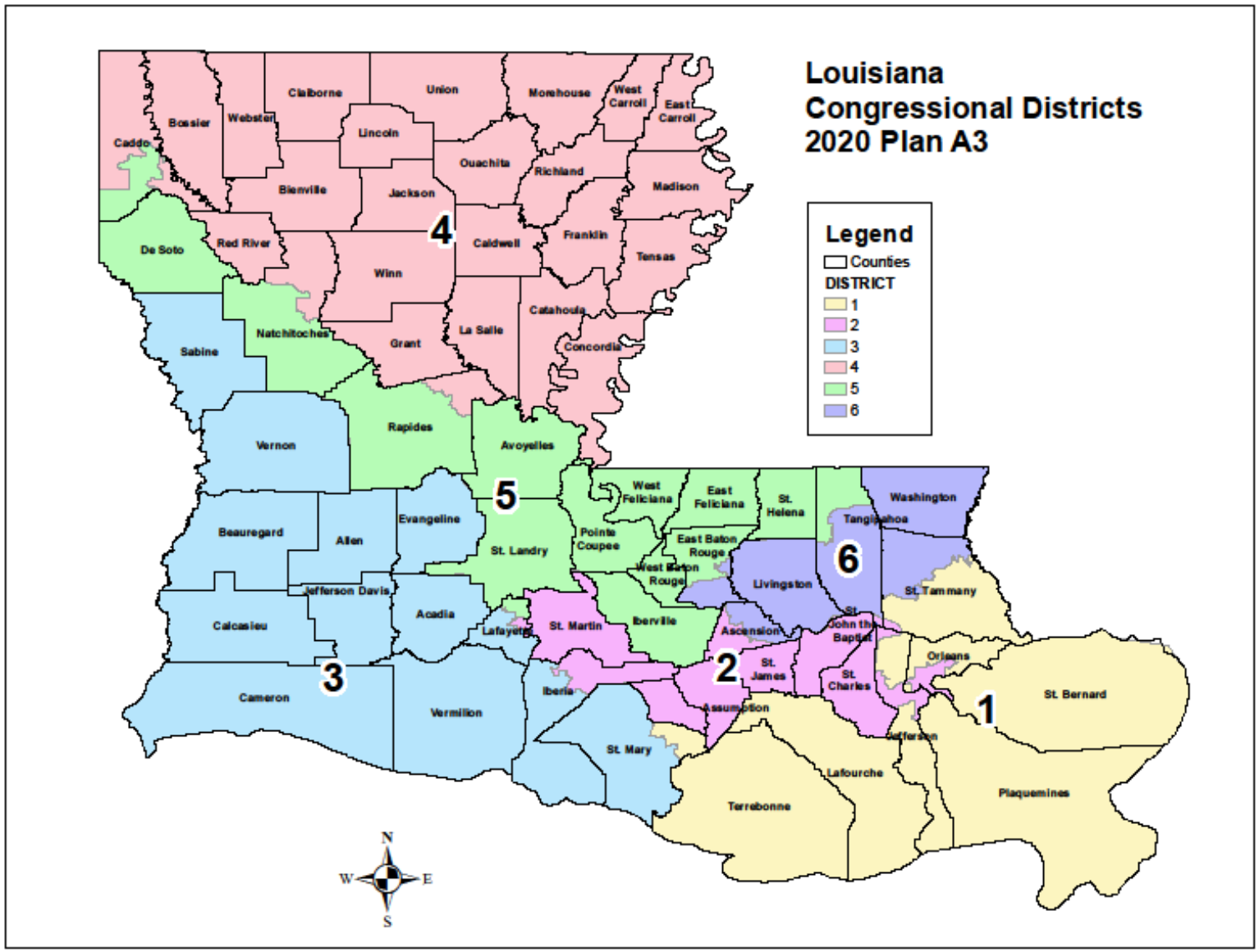
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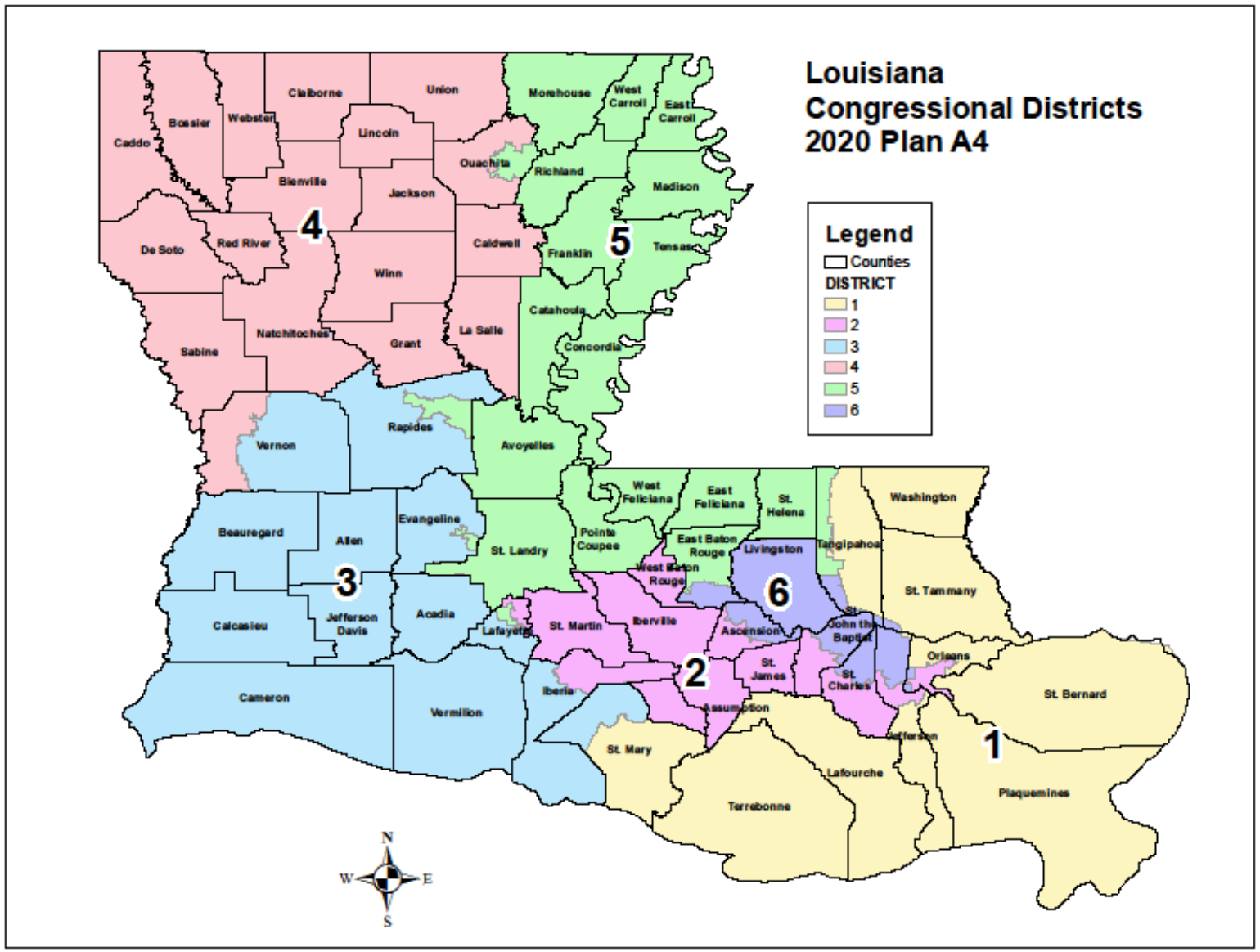
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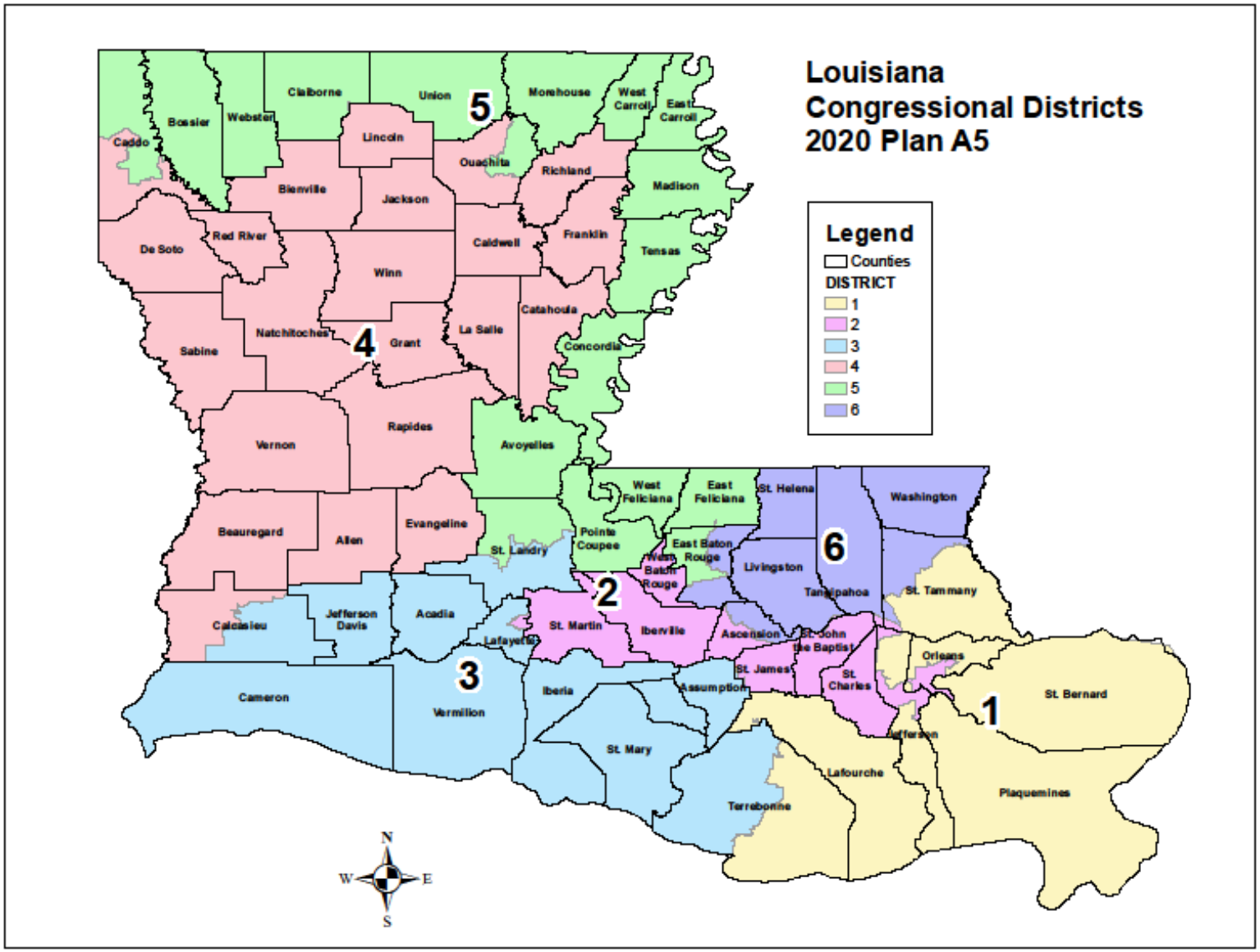
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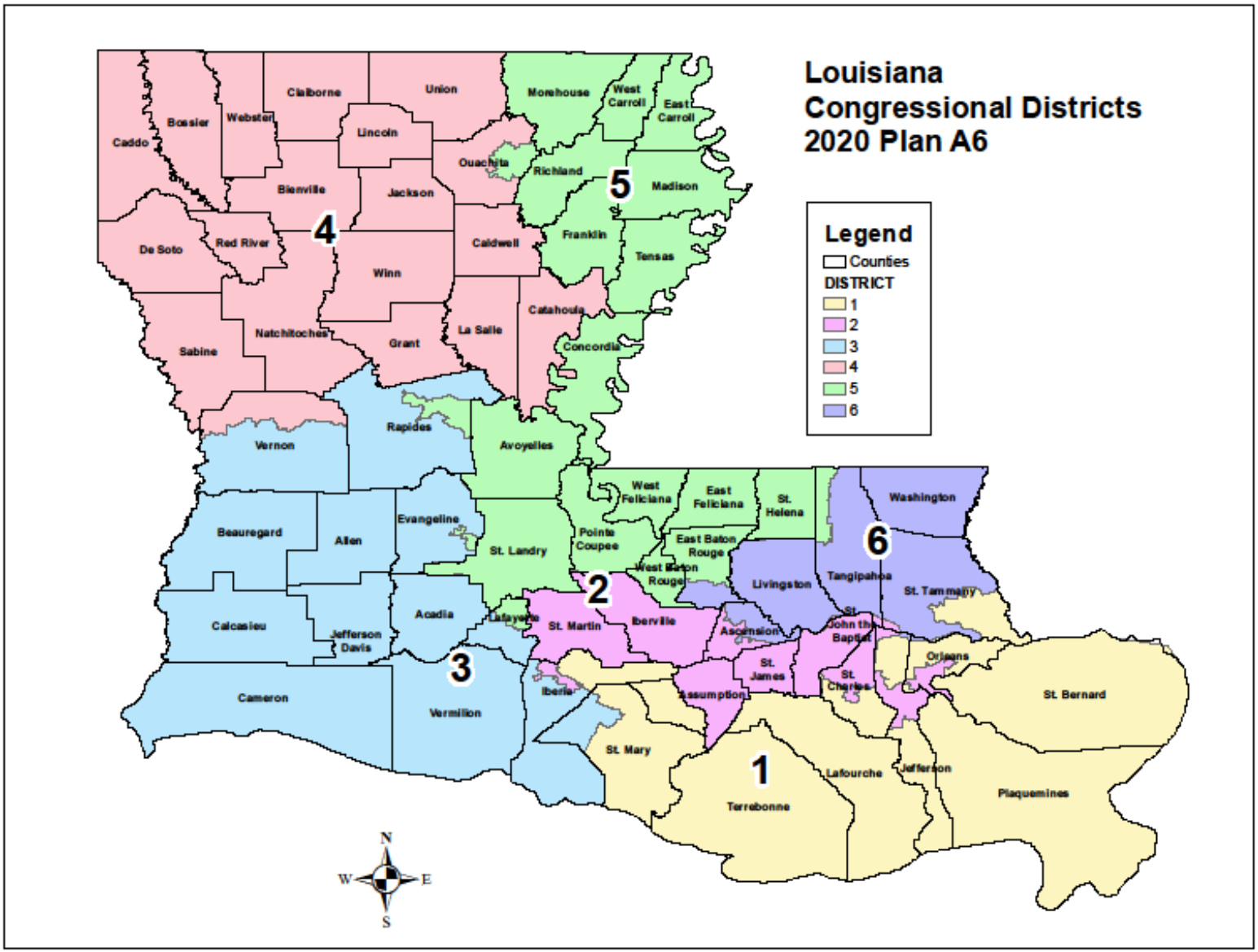
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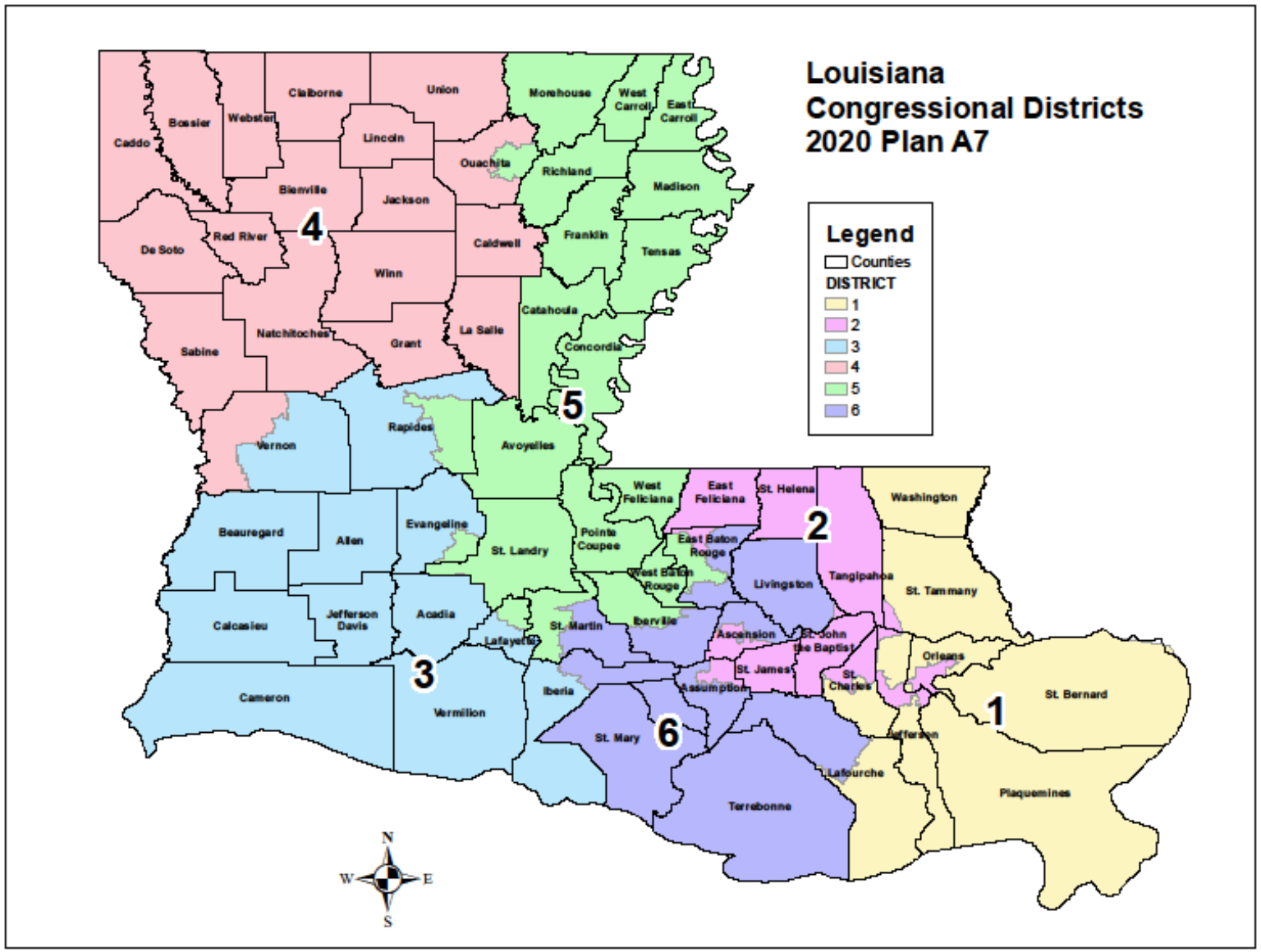
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