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

Supplemental Expert Report of Dr. R. Blakeslee Gilpin

Hearing Exhibit
PR-88
3:22-cv-00211-SDD-RLB

I understand that certain experts for the state have contended that the Court should disregard the self-identification of Louisianans who identify as both Black and another race or ethnicity other than white in determining whether an illustrative congressional map has a Black majority. I have been asked to provide context for that argument from Louisiana's history of classifying its citizens by race.

More than any other state in the Union, Louisiana's complicated history with racial categorization reveals how fundamentally race is an entirely subjective invention used for the often nefarious purposes of the state and how Louisiana has consistently used racial categories to restrict the rights and freedoms of its Black citizens. Since antebellum times, perhaps the most consistently damaging, disenfranchising and undemocratic aspect of Louisiana's racial categorization has been to ignore the self-identification of its citizens.

As documented in the main report, Louisiana's antebellum history of racial categorization was one of exceptional fluidity in comparison to that of the rest of the United States. However, this early fluidity underscores how that history provides an especially clear record of hardening racial classifications to impose prejudicial control. Slavery's malign influence on Louisianan laws, social traditions, and cultural practices quickly established that Blackness posed myriad problems for the state. Furthermore, unlike other slave states, Louisiana's sizable population of free people of color created ever-more problematic issues for defining and restricting freedom for whites. Ownership of human beings required the "State erecting a hermetic seal of laws differentiating between racial or ethnic categories."[1]

"The black-white distinction in the United States has supplied a social hierarchy determined at birth, and arguably immutable, even by subsequent achievement," explains one account of color-line categorization in Louisiana, "In the United States, caste-like distinctions between black and white frequently have had their origins in distinctions mandated by law. Judicially and legislatively mandated racial distinctions have played major roles in the American caste system, at times following social trends, but more often helping to shape them. Crucial in forming the social underpinnings of the American caste system has been the very definitions of black and white in the American context."[2]

C. Vann Woodward, the most important Southern historian in American history, successfully established that the laws restricting Black voting beginning with Louisiana's Grandfather Clause helped shape patterns of social segregation that have guided Louisiana ever since.[3] As Woodward explained, these laws created a comprehensive etiquette of discrimination that relied most fundamentally on "a legally mandated caste system."[4]

That caste system began to be legally codified by the Louisiana Supreme Court in *State v. Treadway* (1910). In *Treadway*, the court defined a 'negro' "as a 'black man, especially one of the race who inhabit tropical Africa, and who are distinguished by crisped or curly hair, flat

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[1] Raymond T. Diamond and Robert J. Cottrol, "Codifying Caste: Louisiana's Racial Classification Scheme and the Fourteenth Amendment," Loyola Law Review, Vol. 29, Number 2 (Spring 1983), 259.
[2] Ibid., 256.
[3] C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford, 1955).
[4] Diamond and Cottrol, 265.

noses and protruding lips,'…loosely applied to other dark and black-skinned races and to mixed breeds."[5] The court itself admitted that some "persons possessed of only an admixture of negro blood, notably those whose admixture is so slight" might even make it impossible for "an expert" to "be positive."[6]

Notwithstanding this foundational ambiguity, the existence of a single Black ancestor defined a Louisianan as Black for most of the twentieth century. A flurry of cases in the 1940s, including *Korematsu* and *Akins v. Texas*, revolved around the potential unconstitutionality and discriminatory intent of racial classifications being used by the state.[7] These cases raised the issue that any attempt to use racial classification must be examined for discriminatory purpose. Indeed, "the very act of classifying or labeling individuals according to race has been held to be violative of the equal protection clause."[8] In *Anderson v. Martin*, a Louisiana case involving designating race on ballots, the Supreme Court ruled that "in the abstract, Louisiana imposes no restriction upon anyone's candidacy nor upon an elector's choice in the casting of his ballot. But by placing a racial label on a candidate . . . the State furnishes a vehicle by which racial prejudice may be so aroused."[9] "The vice lies not in the resulting inquiry but in the placing of the power of the state behind a racial classification that induces racial prejudice."[10]

Sunseri v. Cassagne (1940), which involved an annulment request on the basis of undisclosed Black ancestry, affirmed the state's extensive and final authority in determining Louisianans' race, a determination recognized to have negative consequences.[11] *Sunseri*, along with *Green v. City of New Orleans* (1956), established a nearly unreachable standard for racial re-categorization. Once Louisiana had designated a citizen Black for whatever reason, that designation could not be changed "unless all evidence adduced leaves no room for doubt."[12]

The state's investment in the absolute truth of its own designations is perhaps the most concrete expression of the state maximizing the prejudicial possibilities of Jim Crow laws. Discrimination based on these laws covered marriage, schooling, public accommodations and, of course, voting. "Given the existence in Louisiana of a class of light-skinned blacks, sometimes hardly distinguishable from whites, the legal definition of race and the classification of individuals as nonwhite was crucial to the maintenance of statutorily mandated racial discrimination."[13] Indeed, "the 'traceable amount' standard was meant to ensure, therefore, that even blacks who did not look black were kept in their place."[14]

Act 46 of 1970 was the first major legal change to Louisiana's racial classification laws in the post-Jim Crow era. "In signifying race, a person having one-thirty-second or less of Negro blood," read the new law, "shall not be deemed, described, or designated by any public official in

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[5] *Treadway*, 126 La. 300, 52 So. 500 (La. 1910).
[6] Ibid.
[7] 323 US 214 (1944); 325 U.S. 398 (1945).
[8] Diamond and Cottrol, 277.
[9] 375 U.S. 399 (1964).
[10] Ibid.
[11] 196 So. 7 (La. 1940).
[12] 88 So. 2d 76 (La. Ct. App. 1956).
[13] Diamond and Cottrol, 281.
[14] Ibid.

the State of Louisiana as 'colored,' a 'mulatto,' a 'black,' a 'negro,' a 'griffe,' an 'Afro-American,' a 'quadroon,'' a 'mestizo,' a 'colored person,' or a 'person of color.'"[15] Despite the arbitrariness of such designations and the state's imprimatur of legitimacy on such language, *State ex rel Plaia v. Board of Health* (1974) failed to find that Louisiana's classifications involved "invidious racial discrimination," as the statute merely classified and did not require action based on the racial designation.[16]

And yet, if racial categories were simply the state counting people, there was quite a lot at stake with these classifications. Throughout the 1970s, so-called 'race clerks' could change white designations on birth records to black if surnames appeared in a state registry of families with black lineage. Compounding matters further was the hidden nature of the state's racial classifications. It remained common practice through the 1980s for the state of Louisiana not to issue new birth certificates with racial designations (in fact the legislature eventually prohibited the inclusion of such data) "unless requested."[17] Earlier certificates did include the designations of "Louisiana's racial classification scheme" and residents could only guess as to the "discriminatory intent."[18] Regardless, the state continued to keep such data privately, regardless of whether or not it corresponded with the citizens' own self-identification.

These issues became a matter of public debate when Susie Guillory Phipps, a self-identifying white woman from Sulphur, Louisiana, discovered that the state categorized her as "col.", the state abbreviation for colored. Phipps fought for over five years "to change the racial designation on her birth certificate from black to white" discovering along the way "that Louisiana [would] go to extraordinary lengths to keep someone with black ancestry from crossing the color line."[19] Spending over $50,000 to pursue the case, Phipps sued to get her classification changed, citing the equal protection clause of the Fourteenth Amendment. Phipps had been raised in "an era when race in rural Louisiana was confirmed by neighbors under a custom called 'common repute.'"[20] Beyond confirming the persistent social practice of racial classification and social caste exposed by C. Vann Woodward in the mid 1950s, Phipps' case questioned "whether Louisiana's scheme of racial definition, categorization, and classification has evinced racially discriminatory purpose and effect, i.e., the maintenance of social caste based on race."[21]

The attorney for the state of Louisiana in Phipps' case explained that the standard of evidence in a murder trial "would be nowhere near as strict" as that required to change one' race in the eyes of the state.[22] Spending $5,100 for genealogical research, the state established Phipps' ancestry stretching 223 years "to the black mistress of a Mobile plantation owner in 1760" and "calculated that Phipps was 3/32 black."[23] As *The Washington Post* reported in 1983,

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[15] Act 46 of 1970 (R.S. 42:267).
[16] 296 So. 2d 809 (1974).
[17] Diamond and Cottrol, 257.
[18] Ibid.
[19] Art Harris, "Louisiana Court Sees No Shades of Gray in Woman's Request," *The Washington Post*, May 21, 1983.
[20] Ibid.
[21] Diamond and Cottrol., 258.
[22] Harris.
[23] Ibid.

"no other state has such a racial classification law."[24] In its refusal to change Phipps' race, Louisiana's courts upheld the 1/32 law as constitutional and ruled further that it was "valid to classify people by race."[25]

However, the excessive negative national press attention surrounding Phipps' case prompted Louisianan politicians to act. While Phipps' case was on appeal, Governor David C. Treen repealed the 1970 statute. On July 6, 1983, Louisiana's new racial classification law allowed citizens "to change birth records by "presenting 'a preponderance of evidence' to prove" one's whiteness. In other words, the state remained as invested in racially classifying its citizens as ever but the stringency of the 'no room for doubt' standard would be abandoned.[26] Ronald Davis, then State Assistant Attorney General, explained that "the state is not in the business of officially determining race," adding that the new legislation "will make it easier for people to change their racial designation." The change was "meaningful from a symbolic point of view," Davis explained, "because Louisiana had appeared to be in the Dark Ages."[27]

In Louisiana, as elsewhere in the nation, racial classification is tied to the collection of statistics for census and health purposes with racial data collected at birth for "statistical purposes like monitoring population migration, disease and fertility."[28] However, given Louisiana's long history of racial classification used to prop up voter disenfranchisement schemes like literacy tests and Grandfather clauses, the state's actual use of racial classifications has consistently served as a vehicle to maintain social caste based on race.

Only in the past two decades have American citizens been permitted to identify as more than one race. The U.S. Census Bureau adheres to the 1997 Office of Management and Budget standards on race and ethnicity which do "permit the reporting of more than one race" and responses are "based upon self-identification."[29] The 2000 Census was the first time that this self-identification standard was put into use and continued with the 2010 and 2020 census. As the Census literature explains, "the racial categories included in the census questionnaire generally reflect a social definition of race recognized in this country and not an attempt to define race biologically, anthropologically, or genetically."[30] Despite the ability to self-identify as more than one race, nowhere in these standards does it indicate the state's prerogative to make racial decisions for its citizens.

For most of the state's history, Louisiana has been eager to designate anyone who could possibly be counted as Black to prevent them from voting. There is little question that this very history has encouraged Louisianans to self-identity as multiracial to avoid the state's discriminatory classifications. The state's desire to decide for voters who identity as both Black and a race or ethnicity other than white whether or not they should count as Black is disturbingly reminiscent of this long history of imposing racial categories to disenfranchise its Black citizens.

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[24] Ibid.
[25] Regina J. Hills, "State's 1-32nd 'Negro blood' law valid" UPI, May 19, 1983.
[26] Frances Frank Marcus, "Louisiana Repeals Black Blood Law," *The New York Times*, July 6, 1983.
[27] Ibid.
[28] Bob Heuser, chief of natality statistics for the National Center for Health Statistics.
[29] Rachel Marks and Nicholas Jones, "Collecting and Tabulating Ethnicity and Race Responses in the 2020 Census" https://www2.census.gov/about/training-workshops/2020/2020-02-19-pop-presentation.pdf
[30] Ibid.

Per 28 U.S. Code 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 2, 2022.

R. Blakeslee Gilpin, Ph.D.