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

PRESS ROBINSON, EDGAR CAGE, DOROTHY NAIRNE, EDWIN RENÉ SOULÉ, 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.	Case No. 3:22-cv-00211-SDD-SDJ c/w
EDWARD GALMON, SR., CIARA HART, NORRIS HENDERSON, and TRAMELLE HOWARD, Plaintiffs, v. R. KYLE ARDOIN, in his official capacity as Louisiana Secretary of State, Defendant.	Case No. 3:22-cv-00214-SDD-SDJ

PLAINTIFFS' AMENDED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW*

* Plaintiffs Edward Galmon, Sr., Ciara Hart, Norris Henderson, and Tramelle Howard (the "*Galmon* Plaintiffs"), Plaintiffs Press Robinson, Edgar Cage, Dorothy Nairne, Edwin René Soulé, Alice Washington, Clee Earnest Lowe, Davante Lewis, Martha Davis, Ambrose Sims, NAACP Louisiana State Conference, and Power Coalition for Equity and Justice (the "*Robinson* Plaintiffs"), and Intervenor-Plaintiff Louisiana Legislative Black Caucus (together with the *Galmon* Plaintiffs and the *Robinson* Plaintiffs, "Plaintiffs") submit these amended joint proposed findings of fact and conclusions of law, which have been updated with the finalized transcript for the proceedings on May 10, 2022. *See* Rec. Doc. No. 162 at vi. Plaintiffs' proposed findings of fact and conclusions of law are otherwise the same as their previous filing.

TABLE OF CONTENTS

CITATION GLOSSARY vi

TRANSCRIPT INDEX vi

INTRODUCTION 1

PROPOSED FINDINGS OF FACT 2

I. Plaintiffs 2

A. The *Robinson* Plaintiffs 2

B. The *Galmon* Plaintiffs 4

C. Intervenor-Plaintiff 5

II. Defendants 5

III. Background 5

A. 2020 Census and Demographic Developments 5

B. 2022 Enacted Congressional Plan 7

IV. Likelihood of Success on the Merits 9

A. First *Gingles* Precondition: Numerosity and Compactness 9

1. Numerosity 12

a. *Robinson* Illustrative Plans 12

b. *Galmon* Illustrative Plans 13

c. Use of the AP Black Metric 14

2. Geographic Compactness 17

a. Contiguity 18

b. Single-Member Districts 18

c. Population Equality 19

d. Maintenance of VTDs 20

e. Respect for Communities of Interest 20

f. Respect for Political Subdivisions 27

g. Compactness 29

h. Fracking 34

i. Core Retention 35

j. Incumbent Pairing 37

k. Racial Considerations 38

B. Racially Polarized Voting 49

1. Second *Gingles* Precondition: Political Cohesion 51

2. Third *Gingles* Precondition: Bloc Voting 53

C. Totality of Circumstances 59

1. Senate Factor One: History of Voting-Related Discrimination 60

a. Racial Hierarchies and Suppression of the Franchise in Antebellum Louisiana 62

b. Targeted Efforts Against Black Voters in Reconstruction Louisiana 63

c. Official Discrimination after the Voting Rights Act..... 65

d. Redistricting-Related Discrimination 66

e. Discrimination in Areas Related to Voting..... 67

2. Senate Factor 2: Racially Polarized Voting 68

3. Ultimately, the Court concludes that Defendants have not adduced facts to displace the evidence of racial bias in Louisiana voting patterns. Senate Factor 3: Discriminatory Voting Procedures..... 75

4. Senate Factor Four: Candidate Slating 76

5. Senate Factor Five: Contemporary Socioeconomic Disparities ... 76

6. Senate Factor Six: Racial Appeals in Louisiana Campaigns 83

7. Senate Factor Seven: Underrepresentation of Black Louisianians in Elected Office 84

8. Senate Factor Eight: State Nonresponsiveness 85

9. Senate Factor Nine: Tenuousness of Justification for Enacted Map 89

10. Proportionality 91

V. Irreparable Harm 91

VI. Balance of Harms and Public Interest 93

A. Implementation of New Congressional Map 93

B. Harm to Voters and Candidates and Public Interest 99

PROPOSED CONCLUSIONS OF LAW 101

I. Plaintiffs are substantially likely to succeed on the merits of their Section 2 claims. 101

A. Plaintiffs have satisfied the first *Gingles* precondition because a second compact, majority-Black congressional district can be drawn in Louisiana. 104

1. Louisiana's Black population is sufficiently numerous to form an additional majority-Black congressional district. 104

2. Louisiana's Black population is sufficiently compact to form a second majority-Black congressional district. 106

B. Plaintiffs have satisfied the second *Gingles* precondition because Black Louisianians are politically cohesive. 111

C. Plaintiffs have satisfied the third *Gingles* precondition because white Louisianians engage in bloc voting to defeat Black-preferred candidates. 112

D. The totality of circumstances demonstrates that HB 1 denies Black Louisianians an equal opportunity to elect their preferred candidates to Congress. 114

1. Senate Factor One: Louisiana has an ongoing history of official, voting-related discrimination. 116

2. Senate Factor Two: Louisiana voters are racially polarized. 117

3. Senate Factor Three: Louisiana's voting practices enhance the opportunity for discrimination. 119

4. Senate Factor Four: Louisiana has no history of candidate slating for congressional elections. 120

5. Senate Factor Five: Louisiana's discrimination has produced severe socioeconomic disparities that impair Black Louisianians' participation in the political process. 120

6. Senate Factor Six: Both overt and subtle racial appeals are prevalent in Louisiana's political campaigns. 122

7. Senate Factor Seven: Black candidates in Louisiana are underrepresented in office and rarely succeed outside of majority-minority districts. 122

8. Senate Factor Eight: Louisiana has not been responsive to its Black residents. 123

9. Senate Factor Nine: The justifications for HB 1 are tenuous. 124

10. Proportionality further supports a finding of vote dilution. 125

E. Defendants' additional legal arguments lack merit. 126

1. Plaintiffs have standing to bring their Section 2 claim. 126

2. Section 2 confers a private right of action. 127

II. Plaintiffs and other Black Louisianians will suffer irreparable harm absent a preliminary injunction. 128

III. The balance of equities and the public interest favor injunctive relief. 129

IV. Any remedial plan must contain an additional congressional district in which Black voters have a demonstrable opportunity to elect their candidates of choice. 131

PROPOSED ORDER GRANTING INJUNCTIVE RELIEF 132

CITATION GLOSSARY

Party	Exhibit Designation
Galmon Plaintiffs	GX-##
Robinson Plaintiffs	PR-##
Defendant	SOS_##
Legislative Intervenor-Defendants	LEG_##
State Intervenor-Defendant	LAG_##

TRANSCRIPT INDEX

Date	Citation Format	Attached as Exhibit
Monday, May 9, 2022	May 9 Tr. ##:##-##:##	N/A (*see* Rec. Doc. No. 162-1)
Tuesday, May 10, 2022	May 10 Tr. ##:##-##:##	2
Wednesday, May 11, 2022	May 11 Tr. ##:##-##:##	N/A (*see* Rec. Doc. No. 162-3)
Thursday, May 12, 2022	May 12 Tr. ##:##-##:##	N/A (*see* Rec. Doc. No. 162-4)
Friday, May 13, 2022	May 13 Tr. ##:##-##:##	N/A (*see* Rec. Doc. No. 162-6)

INTRODUCTION

Pursuant to the Court's minute entry dated May 3, 2022, *see* Rec. Doc. No. 136, Plaintiffs respectfully submit the following proposed findings of fact, conclusions of law, and proposed order granting preliminary injunctive relief.

The evidence presented at the preliminary injunction hearing established that Louisiana's enacted congressional map drawn by House Bill 1 ("HB 1") violates Section 2 of the Voting Rights Act of 1965 under the standards established by *Thornburg v. Gingles*, 478 U.S. 30 (1986), and its progeny. Plaintiffs have established the first *Gingles* precondition by demonstrating that Louisiana's Black population is sufficiently large and compact to form a second majority-Black congressional district. They further established the second and third *Gingles* preconditions by showing that Black Louisianians are politically cohesive and that white Louisianians vote sufficiently as a bloc to enable them usually to defeat Black voters' candidates of choice. And the totality of circumstances makes clear that the enacted map denies Black voters an equal opportunity to participate in the state's political processes and elect their preferred candidates to the U.S. House of Representatives. To prevent the irreparable harm of vote dilution for Plaintiffs and all Black Louisianians, the Court can and should remedy this violation of federal law and provide preliminary injunctive relief in advance of the 2022 midterm elections.

In response, Defendants have attempted to confound the proceedings by manufacturing additional hurdles that they claim Plaintiffs must clear to secure relief—for example, drawing an illustrative plan without consideration of race, or proving in the first instance that the cause of racially polarized voting is the result of race and not partisanship. But no binding authority imposes these requirements on Plaintiffs. And, in any event, the evidence presented at the hearing established that race did not predominate in the drawing of Plaintiffs' illustrative maps and that race is the driving mechanism for Louisiana's polarized voting.

Defendants' argument that it is too close to the election to implement any remedy is contrary to law and to the facts adduced at the hearing. There is ample time in advance of the State's November 8, 2022, open primary election—more than five-and-a-half months from now—for the Louisiana State Legislature or this Court to implement a remedial congressional plan that complies with the Voting Rights Act. The evidence at trial, including the testimony of Governor John Bel Edwards's executive counsel and Louisiana's commissioner of elections, demonstrated that the State has regularly postponed pre-election deadlines and adjusted election procedures when required, and there is no reason to conclude that it would be unable to do so now. Diluting the voting strength of Louisiana's Black voters in violation of the Voting Rights Act would impose irreparable harm that far outweighs any administrative inconvenience that might result from the Court's enforcement of that landmark legislation. For these reasons and those that follow, the Court should grant Plaintiffs' motions for preliminary injunction.

PROPOSED FINDINGS OF FACT

I. Plaintiffs

A. The *Robinson* Plaintiffs

1. Plaintiff Press Robinson is a Black resident of Baton Rouge, Louisiana, who is registered to vote and intends to vote in future congressional elections. PR-1. Under the enacted congressional plan, Plaintiff Robinson resides in Congressional District 2. Rec. Doc. No. 143 ¶ 15.

2. Plaintiff Edgar Cage is a Black resident of Baker, Louisiana, who is registered to vote and intends to vote in future congressional elections. PR-2. Under the enacted congressional plan, Plaintiff Cage resides in Congressional District 2. Rec. Doc. No. 143 ¶ 18.

3. Plaintiff Dorothy Nairne is a Black resident of Assumption Parish, Louisiana, who is registered to vote and intends to vote in future congressional elections. PR-3. Under the enacted congressional plan, Plaintiff Nairne resides in Congressional District 6. Rec. Doc. No. 143 ¶ 21.

4. Plaintiff Edwin René Soulé is a Black resident of Hammond, Louisiana, who is registered to vote and intends to vote in future congressional elections. PR-4. Under the enacted congressional plan, Plaintiff Soulé resides in Congressional District 1. Rec. Doc. No. 143 ¶ 24.

5. Plaintiff Alice Washington is a Black resident of Baton Rouge, Louisiana, who is registered to vote and intends to vote in future congressional elections. PR-5. Under the enacted congressional plan, Plaintiff Washington resides in Congressional District 6. Rec. Doc. No. 143 ¶ 27.

6. Plaintiff Clee Earnest Lowe is a Black resident of Baton Rouge, Louisiana, who is registered to vote and intends to vote in future congressional elections. PR-6. Under the enacted congressional plan, Plaintiff Lowe resides in Congressional District 6. Rec. Doc. No. 143 ¶ 30.

7. Plaintiff Davante Lewis is a Black resident of Baton Rouge, Louisiana, who is registered to vote and intends to vote in future congressional elections. PR-7. Under the enacted congressional plan, Plaintiff Lewis resides in Congressional District 2. Rec. Doc. No. 143 ¶ 33.

8. Plaintiff Martha Davis is a Black resident of Baton Rouge, Louisiana, who is registered to vote and intends to vote in future congressional elections. PR-8. Under the enacted congressional plan, Plaintiff Davis resides in Congressional District 2. Rec. Doc. No. 143 ¶ 36.

9. Plaintiff Ambrose Sims is a Black resident of West Feliciana Parish, Louisiana, who is registered to vote and intends to vote in future congressional elections. PR-9. Under the enacted congressional plan, Plaintiff Sims resides in Congressional District 5. Rec. Doc. No. 143 ¶ 39.

10. Plaintiff National Association for the Advancement of Colored People Louisiana State Conference ("Louisiana NAACP") is a state subsidiary of the National Association for the Advancement of Colored People, Inc. PR-10. Members of the Louisiana NAACP include Black

voters who live in every parish and in each of the six congressional districts in the enacted congressional plan. PR-10; Rec. Doc. No. 143 ¶ 41.

11. Plaintiff Power Coalition for Equity and Justice ("Power Coalition") is a coalition of groups from across Louisiana whose mission is to organize, educate, and turn out voters, and fight for policies that create a more equitable and just system in Louisiana. PR-11; Rec. Doc. No. 143 ¶¶ 43-44. Because the Legislature has enacted a map that packs Black voters into Congressional District 2 and cracks them among the remaining districts, Power Coalition will need to increase education and outreach to member organizations and voters in Congressional Districts 1, 3, 4, 5, and 6, where Black voting strength is diluted. PR-11.

B. The *Galmon* Plaintiffs

12. Plaintiffs Edward Galmon, Sr., is a Black resident of St. Helena Parish, Louisiana who is registered to vote and intends to vote in future congressional elections. GX-6 ¶¶ 2-3, 5; Rec. Doc. No. 143 ¶¶ 1-2. Under the enacted congressional plan, Plaintiff Galmon resides in Congressional District 5. GX-6 ¶ 4; Rec. Doc. No. 143 ¶ 3.

13. Plaintiff Ciara Hart is a Black resident of East Baton Rouge Parish, Louisiana who is registered to vote and intends to vote in future congressional elections. GX-7 ¶¶ 2-3, 5; Rec. Doc. No. 143 ¶¶ 4-5. Under the enacted congressional plan, Plaintiff Hart resides in Congressional District 6. GX-7 ¶ 4; Rec. Doc. No. 143 ¶ 6.

14. Plaintiff Norris Henderson is a Black resident of Orleans Parish, Louisiana who is registered to vote and intends to vote in future congressional elections. GX-8 ¶¶ 2-3, 5; Rec. Doc. No. 143 ¶¶ 7-8. Under the enacted congressional plan, Plaintiff Henderson resides in Congressional District 2. GX-8 ¶ 4; Rec. Doc. No. 143 ¶ 9.

15. Plaintiff Tramelle Howard is a Black resident of East Baton Rouge Parish, Louisiana who is registered to vote and intends to vote in future congressional elections. GX-9

¶¶ 2-3, 5; Rec. Doc. No. 143 ¶¶ 10-11. Under the enacted congressional plan, Plaintiff Howard resides in Congressional District 2. GX-9 ¶ 4; Rec. Doc. No. 143 ¶ 12.

C. Intervenor-Plaintiff

16. Intervenor-Plaintiff Louisiana Legislative Black Caucus ("LLBC") is an association of Black members of the Louisiana State Legislature. Members of LLBC opposed HB 1 when it was first proposed and were united in opposing the plan throughout the process of its adoption by the Legislature.

II. Defendants

17. Defendant R. Kyle Ardoin is the Louisiana Secretary of State and is named in his official capacity. Rec. Doc. No. 143 ¶¶ 45-46.

18. Intervenor-Defendant Clay Schexnayder is the Speaker of the Louisiana House of Representatives. Rec. Doc. No. 143 ¶ 47.

19. Intervenor-Defendant Patrick Page Cortez is the President of the Louisiana Senate. Rec. Doc. No. 143 ¶ 48.

20. Intervenor-Defendant the State of Louisiana is the State, represented by and through Jeff Landry, the Louisiana Attorney General. Rec. Doc. No. 143 ¶ 49.

III. Background

A. 2020 Census and Demographic Developments

21. Every 10 years following the decennial census, the Legislature must redraw district boundaries for Louisiana's congressional districts. Rec. Doc. No. 143 ¶ 50.

22. The U.S. Census Bureau delivered apportionment counts for the 2020 census on April 26, 2021, more than 18 months before the 2022 congressional elections. Louisiana was apportioned six seats in the U.S. House of Representatives, the same number it was apportioned following the 2010 census. Rec. Doc. No. 143 ¶ 51.

23. Between 1990 and 2020, Louisiana's minority population increased from 34.22% to 44.25%, and its minority voting-age population increased from 31.21% to 41.69%. GX-1 Figures 1-2.

24. Between 1990 and 2020, Louisiana's single race ("SR") Black population increased from 30.79% to 31.43%, and its SR Black voting-age population ("BVAP") increased from 27.87% to 30.07%. GX-1 ¶¶ 15, 18, Figures 1-2.

25. Between 1990 and 2020, Louisiana's non-Hispanic ("NH") white population decreased from 65.78% to 55.75%, and its NH white voting-age population decreased from 68.79% to 58.31%. GX-1 ¶¶ 15, 18, Figures 1-2.

26. Between 1990 and 2020, Louisiana's overall population increased by 10.37%. GX-1 ¶ 21. This statewide population growth between 1990 and 2020 can be attributed entirely to a 42.74% increase in the state's minority population. GX-1 ¶ 22; May 9 Tr. 86:2-11. By contrast, between 1990 and 2020, the state's NH population decreased by 6.46%. GX-1 ¶ 22.

27. The first time the U.S. Census Bureau reported Louisiana's any-part ("AP") Black—which includes all Louisianians who identify as Black, including those who identify as Black and another race—population was the 2000 Census. GX-1 Figures 1-2.

28. Between 2000 and 2020, Louisiana's AP Black population increased from 32.86% to 33.13%, and its AP BVAP increased from 29.95% to 31.25%. GX-1 Figures 1-2.

29. From 2010 to 2020, Louisiana's population grew from 4,533,372 to 4,657,757 people—an increase of 2.74%. PR-15 at 15.

30. Louisiana's population growth over the last decade can be attributed entirely to the growth in the overall minority population, while the white population decreased by 4.58%. PR-15 at 15, Table 1.

31. As a matter of total and voting-age population, AP Black Louisianians comprise the largest minority population in the State. PR-15 at 15, Table 1; PR-15 at 16, Table 2. Under the 2020 census, Black Louisianians represent 33.13% of the State's total population. PR-15 at 15, Table 1.

32. The BVAP (using AP Black) is 1,115,769, or 31.25% of the State's total voting-age population—an increase of 7.2% over the 2010 census results. PR-15 at 16, Table 2.

B. 2022 Enacted Congressional Plan

33. The Legislature first passed two identical bills, HB 1 and Senate Bill 5—establishing a congressional plan with only a single majority-Black district—on February 18, 2022. PR-15 at 6. In doing so, the Legislature ignored multiple congressional plans introduced by individual legislators that contained two majority-Black districts. *See, e.g.*, PR-37.

34. On March 9, Governor Edwards vetoed both bills based on a "firm belief" that the map "violates Section 2 of the Voting Rights Act." Rec. Doc. 41-1 at 11; GX-17; GX-18; May 11 Tr. 47:4-48:2.

35. The Legislature overrode Governor Edwards's veto of HB 1 on March 30, 2022. Rec. Doc. No. 143 ¶ 62.

36. The enacted congressional plan has only one majority-Black congressional district. PR-15 at 6. The AP BVAP and NH Black citizen voting-age population ("BCVAP") for the sole majority-Black district—Congressional District 2—is 58.65% and 61.41%, respectively. PR-15 at 23. All other districts have a BVAP below 34%. GX-1 at 17, Figure 10.

37. The voting-age population of each district under the 2022 Congressional Plan is as follows:

Figure 10

2022 Plan – 2020 Census

District	Population	Dev.	18+ Pop	% 18+ Black	% 18+ Latino	% 18+ NH White
1	776319	26	601744	13.43%	10.81%	70.06%
2	776328	35	600126	58.67%	7.93%	29.71%
3	776297	4	586509	24.58%	4.81%	66.89%
4	776200	-93	590852	33.80%	4.08%	58.11%
5	776295	2	597344	32.93%	3.57%	60.32%
6	776318	25	593973	23.95%	6.29%	65.02%

GX-1 at 17, Figure 10.

38. Even though Black residents of Louisiana make up 33.13% of the total population and 31.25% of the state's voting-population, they constitute a majority of the total and voting-age population in just 17% of the state's congressional districts. GX-1 Figures 1-2, 10.

39. 31.5% of the state's BVAP lives in Congressional District 2 under HB 1, and 91.5% of the state's NH white voting-age population lives in the other five districts. GX-1 ¶ 42; May 9 Tr. 116:5-18.

40. Plaintiffs' mapping expert Bill Cooper observed that the enacted congressional plan packs Black voters into a single congressional district, Congressional District 2, and cracks other Black voters among the remaining five congressional districts. GX-1 ¶¶ 36, 43.

41. Like its predecessor plan, HB 1 draws Congressional Districts 2 and 6 to contain highly irregular and noncompact shapes: Congressional District 2 strings together predominantly Black precincts from New Orleans to Baton Rouge through parts of the River Parishes. Congressional District 6 wraps around Congressional District 2, starting on the south shore of Lake Pontchartrain in St. Charles Parish and meandering northwest to West Feliciana Parish, then looping south into Terrebonne and Lafourche Parishes. GX-1 ¶¶ 34, 39; May 9 Tr. 86:23-88:21.

42. HB 1 splits 15 parishes in total, 11 of which are split by Congressional Districts 2 and 6. GX-1 ¶ 39.

IV. Likelihood of Success on the Merits

43. Plaintiffs are substantially likely to succeed on the merits of their Section 2 claims.

A. First *Gingles* Precondition: Numerosity and Compactness

44. Plaintiffs' mapping and demographics experts, Anthony Fairfax and Mr. Cooper, demonstrated that the Black population in Louisiana is sufficiently large and geographically compact to comprise a majority of the voting-age population in two congressional districts in the State's six-district congressional plan. Mr. Fairfax and Mr. Cooper independently presented multiple illustrative maps that included two majority-Black congressional districts.

45. The Court has accepted Mr. Fairfax in this case as qualified to testify as an expert in demography, redistricting, and census data. May 9 Tr. 163:18-164:7. Mr. Fairfax has been a demographer involved in preparing and analyzing redistricting plans for approximately 30 years. May 9 Tr. 167:8-168:13. The Court finds Mr. Fairfax's analysis methodologically sound and his conclusions reliable. In addition, based upon his demeanor at the hearing, and in particular his straightforward and candid responses to questions posed to him by defendants' counsel on cross-examination, the Court finds Mr. Fairfax to be highly credible. The Court credits Mr. Fairfax's testimony and conclusions.

46. Mr. Fairfax prepared three illustrative congressional plans, *Robinson* Illustrative Plan 1, *Robinson* Illustrative Plan 2, and *Robinson* Illustrative Plan 2A. PR-15; PR-86; PR-90.

47. Each of the three illustrative plans from Mr. Fairfax contains a second majority-Black congressional district (illustrative Congressional District 5) that encompasses Louisiana's Delta Parishes and significant portions of East Baton Rouge Parish and the city of Baton Rouge, as well as all or part of between 21 and 24 parishes. PR-15 at 26-27, 54 (map of *Robinson*

Illustrative Plan 1 Congressional District 5); PR-86 at 32 (map of *Robinson* Illustrative Plan 2 Congressional District 5); PR-90 at 4 ("The plan adjustment [from *Robinson* Illustrative Plan 2 to 2A] was insignificant enough to keep all of *Robinson* Illustrative Plan 2's criteria measurements."). Each illustrative plan adheres to traditional districting principles, as well as state districting principles adopted by the Louisiana Legislature in Joint Rule 21. PR-79 (Joint Rule 21); *see also* PR-15; PR-86; PR-90.

48. Each plan retains the state's current majority-Black district (illustrative Congressional District 2), anchored around New Orleans metropolitan area to "lessen the presence of District 2 in Baton Rouge and create a more sing[ular] metro[politan] district." PR-15 at 23-25, 26 n. 48.

49. *Robinson* Illustrative 1 creates two majority-Black districts. Congressional District 2 is anchored in New Orleans and includes many of the River Parishes, whereas Congressional District 5 is centered around Baton Rouge and includes many of the Delta Parishes. PR-15.

50. *Robinson* Illustrative Plan 2 was developed to include more of the city of Baton Rouge in Congressional District 5 consistent with roadshow testimony about New Orleans and Baton Rouge comprising two separate communities of interest. PR-86.

51. *Robinson* Illustrative Plan 2A is virtually indistinguishable from *Robinson* Illustrative Plan 2 but includes minor adjustments to avoid pairing incumbents. PR-90.

52. The Court has also accepted Mr. Cooper in this case as qualified to testify as an expert in redistricting, demographics, and census data. May 9 Tr. 75:1-9. Mr. Cooper earned a living as a demographer for the last 30 years, drawing maps for electoral purposes and providing demography services to nonprofits and government entities. *Id.* at 78:4-12. Mr. Cooper has testified in 52 federal cases regarding voting, the vast majority being Section 2 cases. *Id.* at 78:13-

25. Specifically, Mr. Cooper has testified in a handful of Louisiana voting rights cases and has performed work across the entire state of Louisiana—working in the northwestern corner of the state in Shreveport in the 1990s and then in East Carroll, Madison, Point Coupee, and Terrebonne Parishes. *Id.* at 79:2-16. Given his vast knowledge and expertise in this area and his candid and fulsome testimony, the Court finds Mr. Cooper credible, his analysis methodologically sound, and his conclusions reliable. The Court credits Mr. Cooper's testimony and conclusions.

53. Mr. Cooper prepared four illustrative maps, each of which includes two majority-Black congressional districts. GX-1 ¶¶ 47-83; GX-29 ¶¶ 10-22; May 9 Tr. 93:8-97:3.

54. Mr. Cooper described his objective and process as follows: "I was asked to prepare plans that adhered to traditional redistricting principles and that would possibly demonstrate [that a] second majority black district could be drawn in Louisiana. I was not told that I had to produce such a plan, but in the process of drawing districts it was clear to me that it is, in fact, relatively easy and relatively obvious that one can do so and I don't see how anyone could think otherwise." May 9 Tr. 159:21-160:8.

55. Mr. Cooper testified that, in the past, he has declined to draw illustrative maps where it was not possible to draw majority-minority districts consistent with traditional districting principles. May 9 Tr. 161:7-163:3.

56. Mr. Cooper's illustrative congressional plans contain a second majority-Black congressional district that reaches from East Baton Rouge and St. Landry Parishes in the south to the Delta Parishes along the Louisiana/Mississippi border. GX-1 Figures 12, 14, 16; GX-29 Figure 1. The plans comply with the traditional districting principles adopted by the Legislature to guide its redistricting efforts following the 2020 census. GX-1 ¶¶ 51-55; GX-20.

57. In drawing his illustrative plans, Mr. Cooper applied the redistricting criteria set forth in Joint Rule No. 21, balancing them all equally, to determine whether it was possible to draw a second majority-Black congressional district in Louisiana. May 9 Tr. 91:4-22, 97:5-98:8.

58. The main difference between Mr. Cooper's illustrative plans and HB 1 is that he made Congressional Districts 2 and 6, which were bizarrely shaped under HB 1, more regularly shaped. May 9 Tr. 93:8-6.

59. The Court credits the analyses and conclusions of Mr. Fairfax and Mr. Cooper that the Black population in Louisiana is sufficiently numerous to comprise a majority of the voting-age population in two congressional districts.

60. In sum, the Court concludes that Mr. Fairfax's and Mr. Cooper's findings—unrefuted by Defendants' experts—demonstrate Plaintiffs have satisfied the first *Gingles* precondition.

1. Numerosity

61. The Court concludes that Mr. Fairfax and Mr. Cooper have established that the Black population in Louisiana is sufficiently numerous to comprise a majority of the voting-age population in a second congressional district.

62. None of Defendants' experts, particularly Mr. Thomas Bryan and Dr. M.V. Hood, disputed that Plaintiffs' illustrative congressional plans create two majority-Black districts using the AP BVAP metric. May 11 Tr. 110:8-15; LEG_01 (Dr. Hood's report containing no analysis of AP BVAP); LAG_02 at 19.

a. *Robinson* Illustrative Plans

63. *Robinson* Illustrative Plan 1 includes two majority-Black districts using both the AP BVAP and NH BCVAP. Under this plan, Congressional District 2 has an AP BVAP of 50.96%

and an NH BCVAP of 54.10%. PR-15 at 23. Congressional District 5 has an AP BVAP of 52.05% and a NH BCVAP of 52.21%. PR-15 at 26.

64. *Robinson* Illustrative Plans 2 and 2A contain two majority-Black districts using the AP BVAP and NH BCVAP. For *Robinson* Illustrative Plan 2, the AP BVAP is 51.55% in Congressional District 2 and 51.79% in Congressional District 5. The NH BCVAP is 54.28% in Congressional District 2 and 52.44% in Congressional District 5. PR-86 at 8, 37. Under *Robinson* Illustrative Plan 2A, Congressional District 2 has an AP BVAP of 51.55% and a NH BCVAP of 54.28%, and Congressional District 5 has an AP BVAP of 51.98% and a NH BCVAP of 52.44%. PR-90 at 8-9.

65. The below table is compiled from Mr. Fairfax's reports:

Illustrative Plan	CD 2 AP BVAP	CD 2 NH BCVAP	CD 5 AP BVAP	CD 5 NH BCVAP
1	50.96%	54.10%	52.05%	52.21%
2	51.55%	54.28%	51.79%	52.44%
2A	51.55%	54.28%	51.98%	52.44%

b. *Galmon* Illustrative Plans

66. The AP BVAPs of Congressional Districts 2 and 5 in each of Mr. Cooper's plans are as follows:

Illustrative Plan	CD 2 BVAP	CD 5 BVAP
1	50.16%	50.04%
2	50.65%	50.04%
3	50.16%	51.63%
4	50.06%	50.29%

GX-1 Figures 13, 15, 17; GX-29 Figure 2.

67. In each of Mr. Cooper's illustrative plans, Black voters make up a majority of the registered voters in both Congressional Districts 2 and 5. GX-29 Figure 5; May 9 Tr. 111:21-23. Mr. Bryan does not dispute this fact. May 11 Tr. 113:19-24.

68. In each of Mr. Cooper's illustrative plans, non-Hispanic single-race Black citizens make up a majority of the voting-age population in both Congressional Districts 2 and 5. GX-29 Figure 5; May 9 Tr. 112:17-24. Mr. Bryan did not dispute this fact. May 11 Tr. 112:18-23.

c. Use of the AP Black Metric

69. Mr. Bryan and Dr. Hood opined that the two proposed majority-Black districts in Mr. Fairfax's first illustrative plan and in all of Mr. Cooper's plans do not reach 50% when the BVAP is measured using a metric they designate "DOJ Black." LAG_02; LEG_01. However, neither of these experts offered an opinion as to which metric is appropriate in this case or disagreed that Plaintiffs' use of AP Black was proper. May 12 Tr. 219:2-6 (Hood testimony); May 11 Tr. 110:2-7 (Bryan testimony).

70. The Court gives little weight to the distinction drawn by Defendants' experts.

71. First, neither Mr. Bryan nor Dr. Hood makes *any* assertion as to which definition should be used, much less any justification for using the more restrictive DOJ Black definition to measure the BVAP in Louisiana. Mr. Bryan acknowledged that the AP Black metric is widely accepted and has been used in other cases. May 11 Tr. 103:21-25 (Mr. Bryan testified that it is "[his] understanding" that at least one court had unanimously determined that AP Black was the proper metric for evaluating first *Gingles* precondition). The Court considers Defendants' failure to offer any expert testimony challenging the appropriateness of the AP Black' metric in this context to be persuasive evidence supporting the use of that approach by Plaintiffs' experts.

72. Dr. Hood, for instance, was unable to defend his use of the DOJ Black definition. He testified that he offered no opinion about the merits of using either the DOJ Black or AP Black definition. May 12 Tr. 234:5-12. Even further, he conceded in his supplemental report that the *Robinson* Illustrative Plan 2 and Plan 2A do have two majority-Black districts using the DOJ Black definition. LEG_78 at 3. Nor did Mr. Bryan offer any opinion on the appropriate definition to use

in this case. May 11Tr. 110:2-7 (Mr. Bryan stated that he "[did] not arrive at a conclusion about what's the appropriate definition [of BVAP] to use.").

73. Moreover, Defendants' experts used an inaccurate and incomplete definition of "DOJ Black" that ignores the second and third steps of the DOJ's definition. For example, Mr. Bryan reported what he called "the *first tier or the first step* of the DOJ's definition of a black minority population; and that population is black in combination with white alone, two races in combination, not Hispanic." May 11 Tr. 6279-13 (emphasis added); *see also* LEG_01 at 4 (Dr. Hood claimed that he used the DOJ definition which "combines all single-race Black identifiers who are also non-Hispanic with everyone who is non-Hispanic and identifies as white and Black" but did not include the second part of the DOJ definition).

74. Plaintiffs' experts' use of AP Black, by contrast, is supported by undisputed evidence at the hearing concerning the history of racial politics in Louisiana, the lived experiences of Black Louisianians, and the self-identification of Black Louisianians. Plaintiff Michael McClanahan of the Louisiana State Conference of the NAACP corroborated Professor Gilpin's testimony: "You know, I remember when I was in school, I'm from a little town of called Zwolle, so in northwest Louisiana and we were taught if we had one drop of black blood, no matter what you look like on the outside, you are considered black." May 9 Tr. 26:23-27:3.

75. Testimony presented by Plaintiffs' expert witness, Professor R. Blakeslee Gilpin (discussed in more detail *infra* Part IV.D.1), supports the conclusion that AP Black is an appropriate definition of "Black," given that it includes all Louisianians who identify as Black and any other race or ethnicity in determining the BVAP.

76. As Dr. Gilpin explained, Louisiana's use of rigid racial categorizations "stretching back to pre-American Louisiana"—categorizations contrary to the self-identification of individual

Louisiana citizens—has long been used to disenfranchise Black voters. May 10 Tr. 228:19-229:6, 229:21-25. This history of categorization is exemplified by the so-called "one-drop rule" and its subsequent analogues. As Professor Gilpin explained, under the one-drop rule, Louisiana deemed any person with a single Black ancestor as Black regardless of self-identification. *Id.* at 228:19-229:6; PR-88 at 2-4. This rule remained in place until 1970 and was then replaced by the 1/32nd rule, which the state enforced vigorously, and even litigated until it was repealed in 1983. May 10 Tr. 229:7-20; PR-88 at 2-5.

77. As Dr. Gilpin testified, over Louisiana's 300-year history, Louisianians of color have become "keenly aware of the consequences" of which of the state's racial categories they fall into. May 10 Tr. 230:12-231:1; PR-88 at 4. This awareness has had direct effects on how multiracial Louisianians identify. *Id*.

78. By contrast, Mr. Bryan testified that while he had "heard the concept" of the one drop rule, he admitted that he did not "deeply know, understand the demographic or historic context of the term." May 11 Tr. 108:8-15.

79. The Court credits Professor Gilpin's and Mr. McClanahan's testimonies on this issue.

80. Two of the illustrative plans presented by plaintiffs (*Robinson* Illustrative Plans 2 and 2A) include two majority Black districts even using the erroneous and unduly narrow "DOJ Black" definition employed by Defendants' experts. Mr. Fairfax testified that he developed *Robinson* Illustrative Plans 2 and 2A to demonstrate that it is possible to create a congressional plan using the more restrictive definition of Black proposed by Mr. Bryan and Dr. Hood. May 9 Tr. 198:11-19. Under *Robinson* Illustrative Plan 2, the DOJ BVAP is 50.02% in Congressional District 2 and 50.96% in Congressional District 5. PR-86 at 7. For *Robinson* Illustrative Plan 2A,

the DOJ BVAP is 50.02% in Congressional District 2 and 51.15% in Congressional District 5. PR-90 at 8.

81. In light of this testimony, the Court finds that it is inappropriate for the State of Louisiana to disregard the racial self-identification of Black citizens of the State merely because they also identify with other races or ethnicities.

82. Thus, the Court concludes that it is appropriate and consistent with the evidence presented at the hearing to use AP Black to determine whether the BVAP is sufficiently numerous to constitute a majority in two congressional districts.

2. Geographic Compactness

83. Plaintiffs' illustrative plans demonstrate that the Black population is sufficiently geographically compact to constitute a voting-age majority in a second congressional district.

84. The Court also finds that the illustrative plans are consistent with the Legislature's stated districting principles—articulated in Joint Rule No. 21, GX-20—as well as traditional districting principles.

85. The districting guidelines adopted by the Legislature in Joint Rule No. 21 included population equality, contiguity, respect for political subdivision boundaries, preserving communities of interest, as well as compliance with Section 2 of the Voting Rights Act. GX-20. Mr. Fairfax's and Mr. Cooper's illustrative maps adhere to these and other neutral, traditional districting criteria, including compactness and minimizing fracking. Notably, while Joint Rule 21 requires consideration of "traditional district alignments . . . for the [Louisiana] House of Representatives, Senate, Public Service Commission, and Board of Elementary and Secondary Education," it does not identify core retention as a factor in congressional redistricting. *Id*.

86. The illustrative plans created by Mr. Fairfax and Mr. Cooper perform as well or better than the enacted plan on all state and traditional districting principles.

87. Mr. Fairfax testified that he balanced all of these districting principles when developing his illustrative plan, and that no one districting principle predominated. May 9 Tr. 178:3-179:12.

88. Mr. Cooper explained that none of the traditional districting principles predominated when drawing his illustrative congressional plans; instead, he "made a real effort to try to balance all the factors." May 9 Tr. 113:9-14.

a. Contiguity

89. The Court finds that Mr. Fairfax's and Mr. Cooper's illustrative congressional maps are composed of contiguous districts. *See* PR-15 at 21; PR-86 at 38; PR-90 at 11; GX-1 Exs. J-3, K-3, L-3; GX-29 Ex. B-3; May 9 Tr. 108:24-109:1, 184:21-24.

90. This fact is not disputed.

91. Moreover, Mr. Cooper's illustrative maps improve on the contiguity of HB 1, which places small areas in East Baton Rouge Parish around the Capitol in Congressional District 6 that are not connected to the rest of the district by anything other than water. May 9 Tr. 110:1-20. The enacted Congressional District 6 also includes a spit of land between Lake Pontchartrain and Lake Maurepas that is not easily accessible from other parts of the district and thus raises additional contiguity concerns. May 9 Tr. 111:4-19.

b. Single-Member Districts

92. The Court finds that Mr. Fairfax's and Mr. Cooper's illustrative congressional maps are composed of single-member districts. GX-1 Exs. J-2, K-2, L-2; GX-29 Ex. B-2; PR-15 at 19.

93. This fact is not disputed.

c. Population Equality

94. The Court finds that Mr. Fairfax's and Mr. Cooper's illustrative congressional maps comply with the one-person, one-vote principle, and that in many instances their illustrative maps more closely adhere to the goal of population equality than does the state's enacted plan.

95. The ideal population size for each district is 776,293 people. Both the enacted congressional plan and Mr. Fairfax's illustrative congressional plans have minimal deviation from the ideal size. PR-15 at 19; May 9 Tr. 182:7-9, 183:7-15; May 12 Tr. 42:6-8.

96. Mr. Fairfax testified that he compared population equality in both plans by measuring the overall population deviation of each plan—that is, the difference between the most and least populated districts. May 9 Tr. 183:10-20. His testimony and analysis in his initial and supplemental report demonstrate that *Robinson* Illustrative Plan 1 had an overall population deviation of 51 and *Robinson* Illustrative Plans 2 and 2A have an overall population deviation of 58. PR-86 at 5, Table 1; PR-90 at 5, Table 1. By contrast, the enacted plan has a population deviation of 65. *Id.*; May 9 Tr. 183:10-20.

97. Similarly, there is no factual dispute that *Galmon* Illustrative Plans 1, 2, and 3 each achieve perfect population equality. In each plan, five districts are equal in population and one district unavoidably contains just one person more than the others. GX-1 Figures 13, 15, 17; GX-29 Figure 2; May 9 Tr. 98:11-99:2.

98. *Galmon* Illustrative Plan 4 also contains minimal, justified population deviation. GX-29 Figure 2. It is impossible to avoid splitting any VTDs while attaining perfect population equality. As a result, *Galmon* Illustrative Plan 4's minimal population deviation is justified by an effort to avoid splitting VTDs. GX-29 ¶¶ 11-12, 14; May 9 Tr. 99:3-12.

99. Defendants do not dispute that any of the illustrative plans drawn by Mr. Fairfax or Mr. Cooper achieved population equality.

100. The Court concludes that Plaintiffs' illustrative plans comply with the one-person, one-vote principle and that all but one have less overall population deviation than the enacted plan.

d. Maintenance of VTDs

101. The Court finds that Mr. Fairfax's and Mr. Cooper's illustrative congressional maps respect the boundaries of VTDs.

102. VTDs are "precinct or precinct proxies defined by the Census Bureau in the PL94-171 redistricting file." GX-1 at 21 n.21.

103. Mr. Fairfax testified that he analyzed the enacted plan and determined that the Legislature prioritized eliminating VTD splits. In accordance with the Legislature's apparent priority to eliminate VTD splits, PR-79 (Joint Rule No. 21), Mr. Fairfax also developed the *Robinson* illustrative plans to eliminate VTD splits. As such, both the enacted plan and Mr. Fairfax's illustrative plans split no VTDs. 185:14-18.

104. It is undisputed that *Galmon* Illustrative Plan 4 does not split a single VTD. GX-29 ¶ 14. In *Galmon* Illustrative Plans 1, 2, and 3, Mr. Cooper split a VTD only when necessary to achieve perfect population equality among the districts. GX-1 ¶¶ 50, 53.

e. Respect for Communities of Interest

105. The Court finds that Mr. Fairfax's and Mr. Cooper's illustrative congressional maps respect Louisiana's communities of interest.

106. Mr. Fairfax explained in his report that he analyzed communities of interest by considering the number of times the illustrative plans split census places and landmark areas. May 9 Tr. 178:5. He also considered extensive socioeconomic data to determine commonalities in different regions and roadshow testimony for insight into how individual members of the community viewed their communities of interest. PR-15 at 14, 21; PR-86 at 21-23; May 9 Tr. 177, 179:25-180:25.

107. Starting with census places, Mr. Fairfax's report and testimony demonstrate that his illustrative plans split fewer census places as communities of interest than the enacted plan. PR-15 at 21-22, May 9 Tr. 186:8-12.

108. Census places include municipalities and census-designated places ("CDPs"). CDPs are generated by the U.S. Census Bureau for statistical purposes and typically reflect "named" areas that are designated by local communities but do not have governmental bodies. PR-15 at 21.

109. As Mr. Fairfax testified, CDPs are "in some ways more communities of interest than actual cities. These are locally defined areas that the community knows about, the community really has named them and so they really represent just as much or even sometimes more [communities of interest] than a city or a town." May 9 Tr. 176:10-20.

110. Mr. Fairfax's report explained that *Robinson* Illustrative Plan 1 split 31 census places and *Robinson* Illustrative Plans 2 and 2A split 26 census places, whereas the enacted congressional plan split 32 census places. PR-15 at 21-22, Appendix C; PR-90 at 5, Table 1.

111. The Court gives little weight to claims by Mr. Bryan that the *Robinson* Illustrative Plan 1 split more places than the enacted plan. As Mr. Fairfax explained, Mr. Bryan defines "places" to include CDPs but then inexplicably analyzes only the number of cities, towns, and villages split, excluding CDPs from his split analysis. May 9 Tr. 176:5-9.

112. In his report, Mr. Fairfax explained that he also preserved communities of interest by minimally splitting major landmarks areas, such as airports, major parks, colleges, and universities. PR-15 at 21-22; PR-90 at 5, Table 1.

113. Mr. Fairfax's report indicates that the illustrative plans and enacted plan split the same number of landmark areas. *Id*., Appendix C; PR-90 at 5, Table 1.

114. Mr. Fairfax also considered socioeconomic data and roadshow testimony to guide his understanding of communities of interest and to ensure his drawing of Congressional District 5 was based primarily on socioeconomic commonalities in the district. May 9 Tr. 186:17-187:1, 188:2-9, 195:10-196:1, 223:19-24.

115. Mr. Fairfax used socioeconomic data to guide his understanding of communities of interest and of commonalities between areas in a particular district. PR-86 at 98-103. He testified that he drew "overlay maps of socioeconomic data . . . to actually see and visually see commonalities amongst different geographic areas in the state or even in a particular city." *Id.*; May 9 Tr. 186:20-25.

116. For instance, Mr. Fairfax explained that he used socioeconomic data about food-stamp recipients and persons with no high school education, which showed how areas in Ouachita Parish, Rapides Parish, Evangeline Parish, Lafayette, and Baton Rouge have socioeconomic commonalities, which informed Mr. Fairfax's decisions in drawing Congressional District 5. Mr. Fairfax also considered the community resilience estimates "an index . . . of the risk for a disaster for a particular community," median household income, poverty, and renter percentages to direct "where the boundary lines actually should be in [a] particular district" and "where the split parishes potentially could be." May 9 Tr. 189:16-190:5, 191:9-22. As Mr. Fairfax testified and the court saw, the community resilience estimates map of most at-risk communities for a disaster in Louisiana "actually creates and maps out the boundaries" of Congressional District 5 in the *Robinson* illustrative maps. May 9 Tr. 190:12-191:1.

117. The Court credits Mr. Fairfax's methodology and conclusions about communities of interest and finds that he preserved significant communities of interest to the extent practicable.

118. In his supplemental report, Mr. Fairfax highlights some of the roadshow testimony by Louisiana voters about their communities of interest that guided him in his mapmaking process. He quotes Albert Samuels asked "why the North Baton Rouge area [was] lumped in a district that really predominantly represents New Orleans. Because from [his] standpoint, that looks like packing and cracking." PR-86 at 22. All of Mr. Fairfax's maps remove large portions of Baton Rouge from Congressional District 2 and place them in Congressional District 5, which is drawn as a second majority-Black district.

119. Mr. Fairfax also relied on testimony from Melissa Flournoy, who testified that because of the "specific challenges for the Northshore," she thought "it's appropriate to consider a congressional district that includes both Baton Rouge and the Northshore and to hold the Florida Parishes together." PR-86 at 22. All of Mr. Fairfax's illustrative plans join East Baton Rouge Parish in the same district as some of the Florida Parishes, specifically East Feliciana, West Feliciana, and St. Helena Parishes and parts of Tangipahoa Parish.

120. Mr. Fairfax also relied on testimony from Gary Chambers during the Baton Rouge roadshow. Mr. Chambers testified that the "people of Assumption Parish are not represented fairly" and should be included in Congressional District 2. PR-86 at 23. Similarly, during the preliminary injunction hearing, plaintiff Dorothy Nairne testified that Assumption Parish should be in Congressional District 2: "We have a shared history, we have a shared cultural heritage, and we work together to make improvements along this area with community development where we are doing work around creating jobs for people, opportunities for young people, and trying to improve our health." May 10 Tr. 89:1-6. It makes "complete sense" based on lived experiences culturally, socioeconomically, historically or otherwise for her community to fall in Congressional

District 2. May 10 Tr. 90:16-22. *Robinson* Illustrative Plan 1 adheres to this testimony with Assumption Parish contained wholly in Congressional District 2.

121. As discussed below, Mr. Cooper further testified that his illustrative maps better preserve Core Based Statistical Areas ("CBSAs") and other political subdivisions than HB 1. CBSAs and other political subdivisions constitute additional communities of interest that are preserved in Mr. Cooper's illustrative maps. May 9 Tr. 132:5-22, 156:16-157:6, 159:8-20. CBSAs are regions defined by the Office of Management and Budget that consist of urban centers and their surrounding communities, reflecting commuting patterns, commercial activity, and communities of interest. May 9 Tr. 103:4-104:24. The federal government uses CBSAs for various purposes, including highway funding and Medicare reimbursement. *Id.* at 104:25-105:15. Each of Mr. Cooper's plans splits fewer CBSAs than HB 1. GX-1 Figure 20; GX-29 Figure 3; May 9 Tr. 105:16-21.

122. Lay witnesses further confirmed that a community of interest exists between St. Landry Parish, Baton Rouge, and the Delta Parishes, which are united in Mr. Cooper's illustrative maps.

123. Charles Cravins is the former St. Landry Parish District Attorney, a former congressional staffer responsible for constituent services in St. Landry Parish's old congressional district, the host of a Zydeco and public affairs radio program, and a lifelong resident of St. Landry Parish. GX-5 ¶¶ 1-2; May 9 Tr. 237:13-17; 238:7-239:5. The Court credits Mr. Cravins's testimony that St. Landry Parish and Baton Rouge share close ties and finds that the two areas together represent a community of interest. GX-5 ¶ 3.

124. Specifically, St. Landry Parish and Baton Rouge share educational ties relating to the long tradition of students from St. Landry Parish attending college or university in Baton

Rouge, May 9 Tr. 239:14-240:18; economic ties reflecting the area's similar dependence on the petrochemical industry and sugar crops, *id.* at 240:19-241;22; media ties arising from shared newspapers, radio stations, and television stations, *id.* at 242:1-13; and social and cultural ties including common familial histories, French and Spanish influences, culinary styles, Catholic traditions, and entertainment interests, *id.* at 242:14-243:10.

125. The Court credits Mr. Cravins's testimony that these ties and connections between St. Landry Parish and Baton Rouge result in common political interests. For example, residents of St. Landry Parish and Baton Rouge share interests in federal policies related to offshore oil drilling, air and water pollution, hurricane relief, flood mitigation, and price supports for sugar cane. May 9 Tr. 245:18-248:2. Residents of St. Landry Parish do not share these interests with residents of Shreveport or other parishes in northwest Louisiana that are paired with St. Landry Parish in the enacted congressional map. *Id.*

126. Thus, Mr. Cooper's illustrative maps, but not the enacted congressional map, assign St. Landry Parish to a congressional district that maintains its community of interest. GX-5 ¶ 6; May 9 Tr. 255:14-20. Similarly, each of the *Robinson* illustrative plans also assigns St. Landry Parish to a congressional district that maintains its community of interest. *See* PR-15 at 20; PR-86 at 23.

127. Christopher Tyson testified that in his view, as a lifelong Louisianian and professor at LSU Law, linking Baton Rouge with the Delta Parishes made sense because of the historical, educational, economic, and familial connections between the two areas. May 9 Tr. 281:14-282:10.

128. Mr. Tyson testified that many families in the Delta Parishes migrated to Baton Rouge for better educational opportunities, such as attending McKinley High School—the only high school that would educate Black people in Baton Rouge during the first half of the 20th

century. May 9 Tr. 282:11-283:7. He also testified that two historically Black colleges, Leland College and Southern Agricultural and Mechanical University, were located in Baton Rouge, and that many Delta Parish natives seeking higher education attending these schools, which were critical to Black Louisianians' ability to have increased economic mobility. *Id.* at 283:8-17.

129. Further, Mr. Tyson testified that Baton Rouge is the cradle of the petrochemical industry that supplies many jobs for Delta Parish residents. May 9 Tr. 284:2-22.

130. From an historical perspective, Mr. Tyson explained that history shows that the pre-Reconstruction plantation economy along the Mississippi River is indicative of a shared experience between the communities in Baton Rouge and in the Delta Parishes. May 9 Tr. 285:3-9.

131. More pointedly, Mr. Tyson testified that continuing to link Baton Rouge and New Orleans in a single congressional district—like the enacted plan's Congressional District 2—"runs the risk of subordinating the issues of Black voters in Baton Rouge" with those of Black voters in New Orleans, even though Black Baton Rouge voters "live in a decidedly different urban context than those in New Orleans." May 9 Tr. 286:24-287:14.

132. Mr. Cooper's illustrative maps, but not the enacted congressional map, assign East Baton Rouge Parish—either in whole or in part—to a congressional district that maintains its community of interest. May 9 Tr. 143:22-144:4. Defendants do not meaningfully dispute that Mr. Fairfax's and Mr. Cooper's illustrative maps preserve communities of interest, and they offered no expert evidence to suggest otherwise. Indeed, Defendants called no expert witness at the hearing to testify about communities of interests, despite arguing in their pre-hearing briefs that Plaintiffs' illustrative maps "ignore any conception of communities of interest." Rec. Doc. No. 10 at 10.

133. The Court finds that Plaintiffs' illustrative plans take into account and preserve communities of interest to the extent practicable and concludes that the illustrative plans adhere to this districting principle.

f. Respect for Political Subdivisions

134. The Court finds that Mr. Fairfax's and Mr. Cooper's illustrative congressional maps respect Louisiana's political subdivisions.

135. The Court finds that the main political subdivisions in Louisiana are parishes and VTDs, which are also referred to as precincts. PR-15 at 13, 21; PR-79 (Joint Rule No. 21).

136. Mr. Fairfax's report explains that *Robinson* Illustrative Plan 1 splits 14 parishes and *Robinson* Illustrative Plans 2 and 2A split 12 parishes; the enacted congressional plan, by contrast, splits 15 parishes. PR-14 at 21; PR-90 at 5, Table 1. None of Defendants' experts disputed this conclusion.

137. Joint Rule 21 states that congressional plans should minimize VTD splits "to the extent practicable." GX-20.

138. Mr. Fairfax testified that he analyzed the enacted plan and determined that the Legislature prioritized eliminating VTD splits. In accordance with the Legislature's apparent priority, Mr. Fairfax also developed the *Robinson* illustrative plans to eliminate VTD splits. As such, both the enacted plan and the illustrative plans split no VTDs. Defendants do not dispute that the *Robinson* illustrative plans splits no VTDs.

139. The following table compares the number of political subdivision splits in Mr. Cooper's illustrative plans to those in HB 1:

Plan	Parish Splits	Populated Municipal Splits	Single-Parish Populated Municipal Splits	Core Based Statistical Area Splits
HB 1	15	30	25	18
Illustrative Plan 1	10	24	18	14
Illustrative Plan 2	11	30	22	16
Illustrative Plan 3	10	29	23	17
Illustrative Plan 4	10	30	21	14

GX-1 Figure 20; GX-29 Figure 3.

140. Each of Mr. Cooper's plans splits fewer parishes than HB 1. GX-1 Figure 20; GX-29 Figure 3; May 9 Tr. 100:8-16.

141. Each of Mr. Cooper's plans contains equal or fewer populated municipality splits than HB 1. GX-1 Figure 20; GX-29 Figure 3; May 9 Tr. 100:17-101:13.

142. Each of Mr. Cooper's plans contains fewer single-parish populated municipality splits than HB 1. GX-1 Figure 20; GX-29 Figure 3; May 9 Tr. 102:24-103:3.

143. Each of Mr. Cooper's plans splits fewer CBSAs than HB 1. GX-1 Figure 20; GX-29 Figure 3; May 9 Tr. 105:16-21.

144. It is undisputed that *Galmon* Illustrative Plan 4 does not split a single VTD. GX-29 ¶ 14. In *Galmon* Illustrative Plans 1, 2, and 3, Mr. Cooper split a VTD only when necessary to achieve perfect population equality among the districts. GX-1 ¶¶ 50, 53.

145. When it was necessary to split a VTD to achieve perfect population equality, Mr. Cooper followed municipal boundaries, census block group boundaries, or census block boundaries. GX-1 ¶ 50. Mr. Cooper also drew an illustrative map with zero VTD splits. GX-29 ¶ 12.

146. The Court finds that Mr. Fairfax's and Mr. Cooper's illustrative maps split fewer parishes and VTDs than the enacted plan and otherwise respect political subdivision boundaries.

g. Compactness

147. The Court finds that Mr. Fairfax's and Mr. Cooper's illustrative congressional maps contain reasonably compact districts.

148. Mr. Fairfax evaluated the enacted congressional plan and his illustrative plans using the Reock, Polsby-Popper, and Convex Hull measures, three widely used statistical measures of a district's compactness. PR-15 at 14, 22. Each test measures compactness on a scale from 0 to 1; the closer the value is to 1, the more compact the district. PR-15 at 14, 22.

149. The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. PR-15 at 14 nn. 31-32.

150. The Polsby-Popper test computes the ratio of the district area to the area of a circle with the same perimeter. PR-15 at 14 n. 32.

151. The Convex Hull test computes a ratio of the area of the district to the area of the convex hull of the district, without regard to population within the areas. Convex Hull is routinely referred to as a "rubber-band" enclosure or polygon. PR-15 at 14 n. 32.

152. As Mr. Fairfax explained in his first report, the mean compactness score—averaging the compactness score for each district—is the primary way to compare compactness between different plans. PR-15 at 31; May 9 Tr. 184:6-14.

153. The mean compactness measures for the *Robinson* Illustrative Plan 1 are .42 (Reock), .18 (Polsby-Popper), and .69 (Convex Hull). The mean compactness scores for *Robinson* Illustrative Plans 2 and 2A are .39 (Reock), .20 (Polsby-Popper), and .71 (Convex-Hull). By

contrast, the mean compactness measures for the enacted congressional plan are .37 (Reock), .14 (Polsby-Popper), and .62 (Convex Hull). May 9 Tr. 185:16-20; PR-15 at 31, Table 10; PR-90 at 5, Table 1.

154. The following table, compiled from Mr. Fairfax's initial and supplemental reports, demonstrates that the *Robinson* illustrative plans are more compact than the enacted congressional plan on the three measures of compactness analyzed by Mr. Fairfax:

Table 1 - Illustrative Plan and HB 1 Mean Compactness Measurements

District	Reock	Polsby-Popper	Convex Hull	Performed Best
Illustrative Plan Mean	**.42**	**.18**	**.69**	**3 of 3**
Illustrative Plan 2 Mean	**.39**	**.20**	**.71**	**3 of 3**
Illustrative Plan 2A Mean	**.39**	**.20**	**.71**	**3 of 3**
HB1 Plan Mean	.37	.14	.62	0 of 3

155. Mr. Cooper used two metrics to evaluate the compactness of the districts in his illustrative plans: Reock and Polsby-Popper. The Reock score measures the ratio between the area of the minimum enclosing circle for that district. The Polsby-Popper score measures the ratio of the district's area to that of a circle with the same perimeter. Both measurements produce a score between zero and one, with one being the most compact. GX-1 ¶ 73 n. 26; May 9 Tr. 106:5-107:11.

156. The following table compares the compactness scores of the districts in Mr. Cooper's illustrative plans to those in HB 1.

Plan	Reock			Polsby-Popper		
		Low	High		Low	High
HB 1						
Mean of All Districts	.37	.18	.50	.16	.06	.34
CD 2	.18			.06		
Illustrative Plan 1						
Mean of All Districts	.36	.23	.53	.19	.09	.27
CD 2	.23			.15		
CD 5	.33			.09		
Illustrative Plan 2						
Mean of All Districts	.41	.23	.53	.19	.09	.27
CD 2	.23			.12		
CD 5	.33			.09		
Illustrative Plan 3						
Mean of All Districts	.38	.23	.52	.18	.08	.31
CD 2	.23			.15		
CD 5	.30			.08		
Illustrative Plan 4						
Avg. of All Districts	.37	.23	.56	.18	.08	.29
CD 2	.23			.15		
CD 5	.35			.09		

GX-1 Figure 18; GX-29 Figure 4.

157. All four of Mr. Cooper's illustrative plans have a higher average Polsby-Popper compactness score than HB 1. GX-1 Figure 18; GX-29 Figure 4; May 9 Tr. 107:12-108:19.

158. All of Mr. Cooper's illustrative plans have a higher average Reock compactness score than HB 1 except for *Galmon* Illustrative Plan 1, which scores just .01 lower than HB 1. GX-1 Figure 18; GX-29 Figure 4; May 9 Tr. 107:12-108:19.

159. Under each of Mr. Cooper's illustrative plans, the two majority-Black districts—Congressional Districts 2 and 5—have a higher Reock and Polsby-Popper compactness score than that of HB 1's sole majority-Black district, Congressional District 2. GX-1 Figure 18; GX-29 Figure 4.

160. In addition, the Court has visually reviewed Plaintiffs' illustrative plans and concludes that the districts in those plans appear to be more compact than those in the enacted plan.

161. Defendants' experts at no point disputed that Plaintiffs' illustrative plans are more compact than the enacted congressional plan on the three measures of compactness.

162. Testimony from Dr. Christopher Blunt, discussed in greater detail below, does not call into question the compactness of Plaintiffs' illustrative plans. Dr. Blunt testified that his simulated plans had an average compactness score of .25, compared to an average compactness score of .18 for Plaintiffs' illustrative plans. May 12 Tr. 39:13-21. But the mere fact that the plans generated by Dr. Blunt's simulations had greater compactness scores by these mathematical measures than the illustrative plans does not call into question the overall compactness of the illustrative plans presented by Plaintiffs' experts. *See* May 9 Tr. 184:1-5 (Mr. Fairfax's testimony indicating that there is no one dispositive measure of compactness). This is particularly true where the average compactness score of .37 (Reock) and .16 (Polsby-Popper) for the enacted congressional plan falls below the average scores of Plaintiffs' illustrative plans and Dr. Blunt's simulated plans.

163. Any comparison between the illustrative plans and Dr. Blunt's simulations is unilluminating. Dr. Blunt testified that he generated his simulations without reference to the enacted congressional plan. May 12 Tr. 108:21-23. Mr. Fairfax testified without dispute by any of Defendants' experts that mapmakers normally "do [not] start from scratch . . . developing a plan anywhere"; instead, mapmakers "start with a baseline and usually that's the previously enacted plan." May 9 Tr. 181:9-14. Thus, the plans generated by Dr. Blunt's simulations shed no light on whether the illustrative plans are compact.

164. In addition, Dr. Blunt used only one statistical measure of compactness—Polsby-Popper—whereas Mr. Fairfax and Mr. Cooper relied on multiple different statistical measures. LEG_03; PR-15 at 114, n.32. As Mr. Fairfax testified, no single test is dispositive, and the three statistical measures assess compactness in different ways. May 9 Tr. 184:1-5. The Court concludes that the three measures together provide a more robust assessment of compactness than using one test alone, and does not credit Dr. Blunt's testimony regarding compactness.

165. The Court also disregards the expert report and testimony of Dr. Alan Murray to the extent that it relates to compactness. Dr. Murray used spatial clustering analysis to determine that Black and white residents do not reside in the same areas in the state of Louisiana. LAG_04. Dr. Murray admitted that he did not review any congressional redistricting plan in drafting his report, and he expressed no opinion about whether the Black population in Louisiana is sufficiently numerous or compact to make up two majority-minority congressional districts that are otherwise consistent with traditional redistricting principles. May 13 Tr. 24:11-16.

166. In his expert report, Dr. Murray stated that he was "engaged by the Louisiana Attorney General's office to assess the characteristics of five Congressional redistricting plans." LAG_04 at 5. But on cross-examination, Dr. Murray testified that he did not review any of Plaintiffs' illustrative plans and in fact has no basis to disagree with any of the opinions offered by Plaintiffs' experts in this case. May 13 Tr. 24:15-23; 24:24-25:6.

167. Dr. Murray's conclusion that the Black and white populations in Louisiana are not distributed heterogeneously is also irrelevant to the question of compactness. Dr. Murray admitted on cross-examination that he has previously analyzed the distribution of Black and white voters in other states, and in every case found that the Black and white populations were distributed heterogeneously. May 13 Tr. 25:7-15. Dr. Murray's findings amount to a general observation about

distributions of Black and white populations everywhere and offer no specific insight into the question of whether any actual congressional district in Louisiana—either in the enacted plan or any of Plaintiffs' illustrative plans—is sufficiently compact. The Court thus finds that Dr. Murray's report and testimony are irrelevant to the question whether Black voters in Louisiana are sufficiently compact to make up a second majority-minority congressional district.

168. Even if Dr. Murray did purport to offer an opinion on the compactness of any congressional district under the enacted plan or any of Plaintiffs' illustrative plans, his report and testimony would not be credible. Dr. Murray admitted on cross-examination that he has no background in redistricting, and he is not aware of any court having considered spatial analysis of the type he conducted here in the context of a Section 2 case. May 13 Tr. 22:4-21; 25:16-26:15.

169. The Court also credits Mr. Fairfax's response to Dr. Murray's report. Mr. Fairfax testified that spatial clustering analysis is not the way to determine whether a plan is compact; statistical measures of compactness are the traditional way to determine whether a map or population therein is compact. May 9 Tr. 203:11-204:5.

170. After reviewing the compactness measures submitted in this case and listening to the expert testimony provided at the preliminary injunction hearing, the Court concludes that the districts in Mr. Fairfax's and Mr. Cooper's illustrative plans are reasonably compact.

171. The Court finds that Mr. Fairfax's and Mr. Cooper's illustrative congressional plans are consistent with the traditional districting principle of compactness.

h. Fracking

172. The Court finds that Mr. Fairfax's illustrative congressional maps reasonably avoid fracking.

173. According to testimony from Mr. Fairfax, fracking occurs when a district boundary splits a jurisdiction into two or more noncontiguous areas, and is considered a form of gerrymandering. May 9 Tr. 193:20-194:1; PR-15 at 15.

174. Mr. Fairfax's report identified eight instances of fracking in the enacted congressional plan, whereas his illustrative plan has only five instances of fracking. PR-15 at 22; PR-90 at 5, Table 1; *see also* May 9 Tr. 194:20-25.

175. None of Defendants' experts disputed that the *Robinson* illustrative maps had fewer instances of fracking.

176. The Court concludes that the *Robinson* illustrative plans exhibit less evidence of fracking.

i. Core Retention

177. Neither Mr. Fairfax nor Mr. Cooper could avoid drawing illustrative districts with lower core retention scores than the districts in the enacted congressional plan in light of their objective of determining whether it is possible to create a second majority-Black district while complying with traditional redistricting principles. GX-29 ¶ 33; May 9 Tr. 204:14-23; PR-86 at 7-10.

178. Indeed, as Mr. Fairfax testified and his reports explained, when developing a plan to analyze whether it is possible to draw an additional majority-minority district to satisfy the first precondition of Gingles, it is "expected" that the new plan may deviate significantly from the previous plan. May 9 Tr. 204:6-23; PR-86 at 7-10 .

179. Defendants' expert Dr. Hood testified that the core retention scores for Plaintiffs' illustrative plans are lower than those for the enacted plan. May 12 Tr. 213:7-25. Dr. Hood conducted a core retention analysis to assess how much of the 2011 congressional plan's

population and geography was retained, or unchanged, under the enacted plans and Plaintiffs' illustrative plans. LEG_01; LEG_78.

180. While Dr. Hood concluded that the enacted plan retains more of the district cores than the illustrative plans, the Court concludes that his analysis is largely unhelpful and wholly irrelevant. Dr. Hood reviewed none of the opening reports prepared by Plaintiffs' expert witnesses. May 12 Tr. 10-19. He testified that he was unaware of the prioritized redistricting principles in Louisiana, and thus, he did not know whether the illustrative plans here complied with such principles. May 12 Tr. 223:19-224:5. In fact, he agreed that he "offer[e]d no opinion as to the compliance of plaintiffs['] illustrative maps here with the principles that were outline by the Louisiana legislature for this redistricting process." May 12 Tr. 234:18-25.

181. Moreover, Dr. Hood conceded that "as a general matter . . . core retention does not trump the Voting Rights Act." May 12 Tr. 233:3-21.

182. Notably, core retention was not one of the principles for congressional redistricting prioritized by the Legislature in Joint Rule No. 21. GX-20. Indeed, a comparison of Joint Rule 21(D)—which governs redistricting for the Legislature and other state government bodies—and Joint Rule 21(E)—which governs congressional redistricting—shows that the omission of any reference to core retention with respect to congressional redistricting was intentional. While Joint Rule 21(D) requires that "[d]ue consideration" be given to "traditional district alignments to the extent practicable," Joint Rule 21(E) includes no reference to retaining traditional district alignments or core retention. *Id.* As Mr. Fairfax explained in his supplemental report, "[w]hen a criterion is not explicitly listed as a guideline to follow, it is usually treated as a lower priority than the other criteria that are specifically listed by the jurisdiction." PR-86 at 8.

183. The Court does not credit Defendants' efforts to misconstrue the legislative record to emphasize core retention as a legislative priority. Defendants asked Plaintiffs' expert Dr. Traci Burch to explain a comment from Senate President Patrick Page Cortez during a February 2 Senate Governmental Affairs Committee hearing, where Senate President Cortez emphasized "continuity of representation." May 10 Tr. 144:8-146:4, PR-52 at 7. Dr. Burch clarified that the complete transcript of the hearing demonstrated that continuity of representation was articulated as the "third" districting priority and that Senate President Cortez's statement was made in reference to state legislative redistricting, not congressional redistricting. May 10 Tr. 145:9-17, 154:16-155:13.

184. In any event, even if core retention were a relevant redistricting principle in this context, all but one of the districts in Mr. Cooper's illustrative plans maintain at least 50% of the 2020 population that resided in the district under the 2011 congressional plan. GX-29 ¶¶ 34-35.

j. Incumbent Pairing

185. The Court finds that Mr. Cooper's maps and *Robinson* Illustrative Plan 2A demonstrate that it is possible to draw a second majority-Black district in Louisiana's congressional map that adheres to the districting principle of incumbent pairing.

186. Notably, incumbent pairing was not one of the Legislature's articulated priorities for congressional redistricting. GX-20.

187. Under each of Mr. Cooper's illustrative plans, all of Louisiana's six current congressional incumbents reside in the district in which they currently live. GX-1 ¶ 56

188. Similarly, *Robinson* Illustrative Plan 2A was developed with the goal of avoiding incumbent pairing. Mr. Fairfax's second supplemental report explained that he made slight adjustments to *Robinson* Illustrative Plan 2 to avoid pairing incumbents. PR-90 at 2-6.

189. Defendants' experts offered no more than cursory references to incumbent pairing and did not present the Court with any empirical analysis on incumbent pairing. *See* May 11 Tr.

148:19-22 (Mr. Bryan stated that he looked at the "location of the incumbents and confirmed that . . . in all of the plans all of the incumbents were in their own districts" but did not include any empirical analysis in his report); May 12 Tr. 205:2-9 (Dr. Hood testified that he concluded that it would be harder for people to vote for incumbents under the illustrative plans based on his core retention analysis); May 12 Tr. 65:15-18 (Dr. Blunt testified that he did not analyze incumbent pairing at all and that he did not know how often incumbents were paired in his simulations).

190. The Court concludes that it is possible to adhere to the districting principle of protecting incumbents under an illustrative plan with two majority-Black districts.

k. Racial Considerations

191. The Court concludes that neither Mr. Fairfax nor Mr. Cooper subordinated traditional districting principles in favor of race-conscious considerations.

192. Mr. Fairfax was asked to "analyze and determine whether it is possible to draw an illustrative plan that adheres to state and federal redistricting criteria and satisfies the first precondition of *Thornburg v. Gingles*." PR-15 at 4.

193. Mr. Fairfax's reports and testimony clearly explain that he considered myriad relevant factors in developing his maps, including compactness, equal population, parish splits, socioeconomic data and roadshow testimony. PR-15 at 13-15; PR-86 at 12. Mr. Fairfax repeatedly reiterated that he did not subordinate any districting principles to race in developing his three illustrative plans. May 9 Tr. 202:5-11; 204:24-205:4; PR-86 at 12.

194. Mr. Fairfax's reports and testimony provide significant insight into this mapmaking process and support his assertions that race did not predominate over other neutral districting principles. Starting with Congressional District 2, Mr. Fairfax explained that he developed *Robinson* Illustrative Plan 1 to "lessen the presence of District 2 in Baton Rouge and create a more sing[ular] metro[politan] district" centered around New Orleans. PR-15 at 26 n.48. During his

testimony, Mr. Fairfax explained: "The design or goals that I had [in drawing the illustrative plans] from the beginning was to make [Congressional District 2] more compact, split less political subdivisions . . . specifically parishes and remove a portion from the Baton Rouge region. And so what I did was there were river parishes that were split, I made them whole. The district was made more compact just by the shape added to it and moved a portion out of East Baton Rouge, brought that district down and made it more compact that way as well." May 9 Tr. 234:6-234:18; *see also* PR-15 at 24-25 (explaining that Congressional District 2 in his illustrative plans "follows the same route as the enacted . . . plan," except that he drew the district to be "significantly more compact" and to include "mostly whole parishes of multiple River Parishes"); May 9 Tr. 190:12-191:1 ("This is that data set that I said the census bureau created from ACS and others called the community resilience estimates where what they did was they came up with an index, if you will, of the risk for a disaster for a particular community. This is at the census [tract] level as well. And so this actually maps out once again in those quintiles that I said, the top two quintiles for those areas that had greater than three risk factors. And so, once again, you can actually see and visually see how this somewhat actually creates and maps out the boundaries really for District 5.").

195. In his supplemental report, Mr. Fairfax described his process for drawing Congressional District 5 as a "Delta centered" district, encompassing the northern region of the Delta Parishes and expanding to include "additional parishes and cities with similar socioeconomic" indicators. PR-86 at 12. Again, some of his decisions were driven by considerations for districting principles such as compactness and communities of interest. Mr. Fairfax explained in his report that he did not include Caldwell Parish in Congressional District 5 "to make District 5 more compact." Likewise, La Salle Parish was "not included [in Congressional District 5] since it did not match the district's socioeconomic commonalities." PR-86 at 13.

196. Mr. Fairfax described how he considered roadshow testimony "either to modify or at least validate the process that [he] was going through" in developing his illustrative plans. May 9 Tr. 195:10-196:1. Mr. Fairfax testified that he relied on roadshow "testimony about keeping the [D]elta parishes intact . . . keeping the Florida parishes whole, there was testimony, for example, about the [R]iver [P]arishes where they were split before but could you make them whole. And so they all fit into the design if you will of the congressional districting plan." *Id.* at 195:19-196:1.

197. Mr. Fairfax similarly considered socioeconomic data from "the beginning," overlaying maps of socioeconomic data at an early stage in his process because it "allow[ed him] to actually see and visually see commonalities amongst different geographic areas in the state or even in a particular city." May 9 Tr. 186:17-187:1; 189:5-15; 190:12-192:11.

198. Notably, Mr. Fairfax clarified that none of the socioeconomic indices he considered throughout his mapmaking process was broken down or aggregated by race. May 9 Tr. 193:11-14.

199. The Court finds Mr. Fairfax's testimony about his map-making process reliable and credible and concludes that he was guided by districting principles and neutral considerations other than race.

200. Mr. Cooper was asked to determine whether it was possible to draw a second majority-minority district that was consistent with traditional redistricting principles. May 9 Tr. 80:22-81:10. As he explained, drawing two majority-Black districts "was not [his] goal because when developing a plan you have to follow traditional redistricting principles; so I—I did not have a goal to under all circumstances create two majority-[B]lack districts." May 9 Tr. 122:15-25.

201. When drawing his illustrative plans, Mr. Cooper was aware of race because he was trying to determine whether it was possible to draw a second majority-Black district consistent with traditional redistricting principles, but he did not prioritize race over any other redistricting

principle. May 9 Tr. 113:11-14 ("Q. . . . Was any one factor a predominant factor in drawing your illustrative maps? A. No. I made a real effort to try to balance all the factors."); *id.* at 156:8-12 ("Q. . . . [W]ould you consider race an important factor that you consider when drawing your illustrative plan districts? A. It is one of several redistricting principles. I try to balance them all.").

202. In his rebuttal expert report, Mr. Cooper maintained that "race did not predominate in the drawing of any of [his] illustrative plans." GX-29 ¶ 6.

203. Although Defendants' expert Mr. Bryan suggested that Mr. Cooper's illustrative maps segregated Black and white Louisianians, Mr. Cooper explained that this is a consequence of the segregation that already exists in cities like Baton Rouge. May 9 Tr. 114:11-115:24; *see also id.* at 137:22-138:10 (Mr. Cooper's testimony explaining that majority-Black neighborhoods were included in his illustrative districts not because of their demographic composition but because they are "very clearly defined neighborhoods that are overwhelmingly black in some cases," and thus that "[t]hey are compact areas and easy to join to other compact [] black populations").

204. The Court finds Mr. Cooper's testimony about his map-making process reliable and credible and concludes that he was guided by districting principles and neutral considerations other than race.

205. The Court rejects Defendants' attempts to conflate Plaintiffs' illustrative maps with the maps struck down in the *Hays* cases following the 1990 census. Defendants contended that the illustrative plans were comparable to maps struck down in the *Hays* cases because both the illustrative maps and the *Hays* maps connected the northern Delta Parishes with East Baton Rouge Parish in a single congressional district. *See, e.g.*, May 9 Tr. 222:1-24.

206. Mr. Fairfax and Mr. Cooper both credibly testified that their maps were distinguishable from the *Hays* maps. Mr. Fairfax testified that the maps at issue in *Hays* were

"extremely non compact" and that he "would never draw a plan that looks like that." May 9 Tr. 222:12-19. Mr. Cooper similarly testified that the map had the "lowest Polsby-Popper score" he had "seen in [his] life" and it was "not surprising" that it was struck down by the court. May 9 Tr. 141:17-23. The Court finds that Mr. Fairfax and Mr. Cooper's testimony about the compactness of their illustrative plans—as more compact on three measures of compactness than the enacted map—undermines any comparison to the *Hays* maps. The Court's visual comparison of the maps at issue in *Hays* and Plaintiffs' illustrative maps in this case confirm that finding.

207. Defendants also put forth several experts who testified that racial considerations predominated in the drawing of Plaintiffs' illustrative maps. *See* LEG_03; LAG_02. The Court, however, does not find their analyses persuasive. Instead, the Court finds their conclusions unfounded and their methodology unsound. The Court also finds that the exceedingly narrow focus of each of the defendants' experts renders their testimony generally less helpful to the Court than the testimony of Plaintiffs' experts. In addition, as discussed further below, based upon the Court's assessment of the demeanor of the respective experts at trial and their responses to questions posed to them on cross-examination, the Court finds Defendants' experts generally less credible than Plaintiffs' experts.

i. Thomas Bryan

208. Defendants offered the testimony of Mr. Bryan, who also testified earlier this year against illustrative maps submitted in a challenge to Alabama's enacted congressional districting plan. May. 11 Tr. 55:14-23. In that case, the court placed very little weight on Mr. Bryan's testimony, finding his analysis to be "selectively informed" and "poorly supported." *Id.* at 150:19-151:4, 151:23-152:1. Mr. Bryan's Alabama testimony about the appropriate metric for determining who is Black caused the court to question Mr. Bryan's credibility, *id.* at 151:5-10, and the court expressed concern about the numerous instances in which Mr. Bryan offered an opinion without a

sufficient basis, or, in some instances, any basis, *id.* at 151:11-15. The Alabama court also criticized Mr. Bryan for opining on the alleged racial considerations motivating illustrative plans without examining all of the traditional districting principles set forth in the legislature's guidelines. *Id.* at 151:16-22. The Court shares these same concerns here.

209. First, the Court finds that Mr. Bryan's demeanor on the stand demonstrated a lack of credibility. For example, Mr. Bryan was offered as an expert in demographics, May 11 Tr. 51:4-9, and he testified extensively about the various metrics for calculating the single-race and mixed-race Black population, *id.* at 61:18-69:7. And yet Mr. Bryan disclaimed any familiarity with the notorious "one-drop rule" that historically has been used as an expansive definition of who is Black. *Id.* at 108:8-109:5. Mr. Bryan's deportment on the witness stand during this line of questioning appeared to reflect insincerity and detracted from his general credibility.

210. The Court further finds that Mr. Bryan's methodologies—and therefore the conclusions he reached—are unreliable. Mr. Bryan's analysis turned on the significance that he attributed to the manner in which Mr. Cooper's illustrative congressional plans split various Louisiana localities. May 11 Tr. 114:8-11. Mr. Bryan, however, did not dispute that Mr. Cooper's illustrative plans split fewer parishes and municipalities than the enacted congressional plan. *Id.* at 115:6-13. Mr. Bryan also admitted that his analysis does not provide the Court with any basis to determine whether the racial distribution in the illustrative congressional plans reflects underlying segregation rather than the map-drawer's racial considerations. *Id.* at 125:17-25, 128:16-22. And Mr. Bryan's analysis concededly did not take account of multiple traditional redistricting criteria, including compactness, contiguity, incumbent protection, and the maintenance of communities of interest. *Id.* at 147:19-150:18. Finally, Mr. Bryan acknowledged that he did not review *Robinson* Illustrative Plans 2 and 2A or do any analysis of those plans. *Id.* at 153:9-25.

211. Finally, Mr. Bryan used an "index of misallocation" to reach his conclusions that several cities, including Baton Rouge, are split along racial lines. LAG_02 at 23. But he admitted to the Court that he had not used the index of misallocation in his only other case as an expert and he did not know whether any court had ever credited a similar misallocation analysis. May 11 Tr. 116:12-17. The Court declines to do so here

212. Accordingly, the Court declines to credit Mr. Bryan's testimony and conclusions.

ii. Dr. Christopher Blunt

213. Defendants offered the testimony of Dr. Blunt, who was asked "to analyze and determine whether a race blind redistricting process following the traditional districting criteria would or would not be likely to produce a plan with two majority-minority districts." May 12 Tr. 25:2-12. Although the Court accepted Dr. Blunt as an expert "in political science with an emphasis in quantitative political science and data analysis," *id.* at 9:7-14, it does not credit his testimony as to simulations analysis for several reasons.

214. First, although Dr. Blunt has a PhD in political science, May 12 Tr. 16:13-17, he is the owner and president of a public opinion consulting practice and focuses on public opinion studies and voter turnout modeling, *id.* at 17:15-18:12. His prior experience has nothing to do with simulations analysis, and he had never undertaken a simulations analysis before this case. *Id.* at 22:25-23:3 ("Q. Now, have you performed an analysis using the redistricting simulations in your prior work? A. No. I had not before this."); *see also id.* at 20:10-21:19, 53:21-24, 54:15-17, 55:13-51:1. Dr. Blunt also confirmed that he has neither published on simulations analysis or redistricting (in a peer-reviewed journal or otherwise) nor taught or even taken a course on these topics. *Id.* at 53:25-54:14, 54:18-55:12. When asked if he is an expert in simulations analysis, Dr. Blunt responded that he is "an expert in data analysis," but acknowledged that "this is the first simulation that [he had] produced." *Id.* at 60:5-13.

215. Second, although Dr. Blunt claimed to have sufficient familiarity with computer simulations to undertake his analysis, May 12 Tr. 24:2-14, his testimony betrayed his unfamiliarity with the specific details and nuances of simulations analysis. Dr. Blunt indicated that he began work on his report—his first actual experience undertaking a simulations analysis—on April 22, just one week before his report was filed. *Id.* at 52:16-24. He did not write the code that he employed for his analysis, instead downloading publicly available code and "wr[iting] the instructions that executed the underlying algorithm." *Id.* at 56:16-58:9. Dr. Blunt noted that he had never run this code before and was unable to answer questions about its functionality. *Id.* at 58:10-59:1 ("Q. . . . Do you have any reason to disagree if I told you Dr. Imai's code. . . is using a Metropolis-Hastings algorithm? A. I wouldn't have any particular knowledge to contest that."); *id.* at 63:11-64:11 (Dr. Blunt's testimony admitting that he is "not sure entirely" whether all relevant redistricting criteria could be programmed into code he used); *id.* at 88:3-10 ("Q. . . . So the algorithm that you've used, you've testified that it doesn't allow you to set up a particular number of split parishes or parish splits? A. Not that I was aware of. Without going . . . under the hood to do something that I, you know, was not familiar with or comfortable with, yeah."); *id.* at 94:1-23 (Dr. Blunt's testimony admitting that he was unsure as to maximum weight compactness could be assigned in algorithm). When asked if he could explain that algorithm contained within the code he used, Dr. Blunt responded that he had "read the article that is under review that Dr. Imai and [his] collaborators have submitted where he explains the algorithm, and [] got a sense for what it was doing," but could not otherwise reproduce it. *Id.* at 59:17-25.

216. Third, Dr. Blunt indicated that simulations "should run according to what the . . . stated legal criteria are." May 12 Tr. 63:1-3; *see also id.* at 64:18-65:2 ("Q. And if a simulation's algorithm is not programmed with sort of the same set of redistricting criteria, then that wouldn't

serve as an appropriate comparison, right? It would be sort of like comparing apples to oranges? A. To some extent, yes. That's why when you set this up, you try to get it as close as you can. You may not be able to get a hundred percent, but you, you know, you program in the constraints that you can."); *id.* at 67:1-7 (similar). And yet, by his own description, his simulations did not reflect the Legislature's criteria as adopted in Joint Rule No 21 or the principles applied by Mr. Fairfax and Mr. Cooper when they drew their illustrative maps. Instead, Dr. Blunt's simulations took into account only four criteria: population equality, contiguity, compactness, and minimization of parish splits. *Id.* at 67:8-15. He conceded that these were not all of the relevant criteria and referred to these four as "among the most important"—without providing any explanation for how he reached this judgment. *Id.* at 68:2-11.

217. Dr. Blunt's simulations did not take into account preservation of political subdivisions other than parishes, May 12 Tr. 68:19-69:17, even though Joint Rule No. 21 prioritized the preservation of VTDs, GX-20.

218. Dr. Blunt's simulations did not take into account preservation of communities of interest beyond subdivision boundaries, May 12 Tr. 29:19-30:2, 71:2-15, even though he acknowledged that this was a paramount criterion adopted by the Legislature, GX-20; May 12 Tr. 67:20-23 ("Q. Joint Rule 21 actually says that communities of interest are more important than parish boundaries; is that right? A. I believe it says that."). Dr. Blunt's explanation for why he did not consider this factor—the difficulty of defining the concept and his concern that such communities might serve "as a proxy for race," May 12 Tr. 29:3-32:7, are not persuasive given that Mr. Fairfax and Mr. Cooper did consider communities of interest like CBSAs when drawing their illustrative maps.

219. Dr. Blunt's simulations did not take into account incumbency protection, even though he acknowledged that this "is often a consideration" in redistricting, May 12 Tr. 69:18-70:18, or fracking, *id.* at 72:24-73:21.

220. Dr. Blunt conceded that his analysis showed only that "it would be extremely unlikely for [a] Louisiana redistricting plan that included two MMDs to emerge in a process that followed *only the redistricting criteria that I used*." May 12 Tr. 38:2-6 (emphasis added). He further conceded that he could not state whether two majority-minority districts might have been drawn had his algorithm incorporated the omitted criteria and reflected the full slate of traditional redistricting principles, *id.* at 73:22-70:10, and that making adjustments to the considered criteria could change this result, *id.* at 104:10-105:6. Because the list of redistricting criteria that Dr. Blunt used in his simulations was incomplete, his conclusions are entitled to little weight.

221. Moreover, several of the criteria that Dr. Blunt's simulations did incorporate were improperly configured. His simulated districts had an average Polsby-Popper score higher than the averages score of both the enacted congressional map and Mr. Cooper's and Mr. Fairfax's illustrative plans. May 12 Tr. 80:16-81:12. And his simulated maps features, on average, either five split parishes or 30 splits parishes. *Id.* at 84:1-15. Dr. Blunt acknowledged that he was unaware of any actual Louisiana congressional maps or any illustrative maps in this case that split only five or as many as 30 parishes. *Id.* at 84:20-86:6. And for each split parish in his simulations, Dr. Blunt was unable to determine how many times the parish was split. *Id.* at 90:20-91:23.

222. Dr. Blunt eventually confirmed the disparities between his simulated maps, the enacted congressional map, and Plaintiffs' illustrative maps—when showed images of four of his

simulated maps, he conceded that they did not resemble any maps he had seen, either enacted by the State of Louisiana or submitted by Plaintiffs in this case. May 12 Tr. 98:9-100:17.

GX-39.

223. Finally, Dr. Blunt conceded that he did not examine whether consideration of race as a non-predominant factor might have produced two majority-minority districts, and could not conclude that such a result was impossible. May 12 Tr. 100:24-105:20.

224. In short, because Dr. Blunt's maps were the product of imperfect inputs and failed to reflect the actual criteria that guided both the Legislature's and Plaintiffs' experts' map-drawing efforts, his conclusion that two majority-Black districts would not occur absent predominant racial consideration is neither persuasive nor credible.

225. Ultimately, the Court finds that race did not predominate in the drawing of Mr. Fairfax's and Mr. Cooper's illustrative congressional plans.

B. Racially Polarized Voting

226. The Court credits the evidence of Plaintiffs' racially polarized voting experts, Dr. Lisa Handley and Dr. Maxwell Palmer.

227. The Court finds Dr. Handley to be a credible and reliable expert witness. May 10 Tr. 7:8-8:7. Dr. Handley has over 30 years of experience working in in the areas of redistricting and voting rights, and has testified about redistricting and polarized voting numerous times. *See* PR-12 at 16; May 10 Tr. 12:6-12. The Court finds that she is qualified to testify as an expert in redistricting, with a focus on racially polarized voting.

228. The Court finds Dr. Handley's analysis methodologically sound and her conclusions reliable. The Court gives weight to Dr. Handley's testimony and conclusions.

229. Dr. Handley undertook an analysis of voting patterns by race by relying on aggregate data from election precincts combining demographic composition with election results. PR-12 at 3. Dr. Handley employed three accepted statistical measures to reliably analyze racially polarized voting patterns in Louisiana: Homogeneous Precinct analysis, Ecological Regression analysis, and Ecological Inference analysis. *Id.* These statistical measures are widely accepted methods for estimating racial polarization. *Id.* From her analysis, she derived the likely percentages of Black and white voters in Louisiana that voted for each candidate in recent election contests in Louisiana, looking at both statewide and congressional elections. PR-12 at 5-6; PR-87 at 6-11.

230. The Court has also accepted Mr. Palmer in this case as qualified to testify as an expert in redistricting with an emphasis in racially polarized voting and data analysis. May 9 Tr. 305:10-15. Mr. Palmer has provided racially polarized voting analysis in eight prior cases, and courts have previously credited and relied on his analysis. *Id.* at 307:25-308:5. The Court finds

Mr. Palmer's analysis methodologically sound and his conclusions reliable. In addition, based upon his demeanor at the hearing, and in particular his straightforward and candid responses to questions posed to him by defendants' counsel on cross-examination, the Court finds Mr. Palmer to be highly credible. The Court credits Mr. Palmer's testimony and conclusions.

231. The Court finds Dr. Palmer credible, his analysis methodologically sound, and his conclusions reliable. The Court credits Dr. Palmer's testimony and conclusions.

232. Dr. Palmer conducted a racially polarized voting analysis of all six of Louisiana's congressional districts as a region and individually. May 9 Tr. 311:16-20.

233. Dr. Palmer employed the statistical technique of "ecological inference," also known as "EI," which "estimates the percentage of voters of each racial or ethnic group supporting each candidate on a particular election" to determine if the analyzed voting group has a candidate of choice and whether the candidate of choice for that group is the same for voters of the other group, or whether they are in opposition to one another. May 9 Tr. 310:17-311:4.

234. Using the EI analysis, Dr. Palmer analyzed 22 statewide elections from 2012 through 2020, looking at the final round of voting for each race and the runoff rounds for each election that went to a runoff. May 9 Tr. 311:21-312:6; GX-2 ¶¶ 13-14. Dr. Palmer's EI analysis derived estimates of the percentage of Black and white voters who voted for each candidate in statewide elections for U.S. President, U.S. Senate, Governor, Lieutenant Governor, Secretary of State, Attorney General, Treasurer, Commissioner of Agriculture, and Commissioner of Insurance from 2012 to 2020. May 9 Tr. 705:8-22.

235. In particular, Dr. Palmer first examined each racial group's support for each candidate to determine if members of the group vote cohesively in support of a single candidate in each election. GX-2 ¶ 15. If a significant majority of the group supported a single candidate, he

then identified that candidate as the group's candidate of choice. *Id.* Dr. Palmer next compared the preferences of white voters to the preferences of Black voters. *Id*. Evidence of racially polarized voting is found when Black voters and white voters support different candidates. *Id*.

236. The Court finds based on the robust and undisputed analysis conducted by Plaintiffs' experts using well-established statistical methods that voting is racially polarized throughout Louisiana because Black and White voters tend to vote cohesively in support of different candidates and the white majority bloc usually defeats the Black-preferred candidate.

1. Second *Gingles* Precondition: Political Cohesion

237. Both Dr. Handley and Dr. Palmer demonstrated that Black voters in Louisiana vote cohesively for the same candidates.

238. The Court finds that Dr. Handley established that Black voters in Louisiana are politically cohesive—in other words, that Black voters usually support the same candidate in statewide elections and in congressional elections. PR-12; PR-87.

239. Dr. Handley concluded that voting in recent statewide elections in Louisiana is starkly racially polarized. In each of the fifteen statewide contests she examined, Black voters supported Black-preferred candidates and the average percentage of Black voter support for their preferred candidates was 83.8%. When contests with only two candidates were considered, the level of support from Black voters reached 93.5%. PR-12 at 8.

240. Dr. Handley found that voting was racially polarized in most congressional districts. PR-87 at Revised Appendix B. Although there was more support from white voters of the Black-preferred candidates in enacted Congressional District 2, the voting in enacted Congressional Districts 3, 4, 5, and 6 was polarized—Black voters supported different candidates that white voters. May 10 Tr. 24:8-13.

241. Dr. Handley also undertook a district-specific analysis of the likely voting patterns of voters the enacted map's Congressional Districts 2, 3, 4, 5, and 6, as these districts are likely to contribute voters to an additional majority-Black district. PR-12 at 13; PR-92, Corrected Appendix C-G. In all congressional districts examined by Dr. Handley, Black voters almost always vote in support of the Black-preferred candidate. *Id.*; May 10 Tr. 28:15-22.

242. The Court finds that these results establish that Black voting in all enacted congressional districts is politically cohesive.

243. The Court finds that Dr. Handley's evidence demonstrates that Black voters are cohesive and tend to support the same candidate at both the statewide and congressional level. PR-12, Appendix A and PR-87, Revised Appendix B.

244. Dr. Palmer also demonstrated that Black voters in Louisiana are politically cohesive across the state of Louisiana and in each of the congressional districts, as evidenced by the fact that Black and white generally support different candidates. He also found that candidates preferred by Black voters are generally unable to win elections. May 9 Tr. 308:20-309:3.

245. Dr. Palmer found that Black voters cohesively supported Joe Biden in the 2020 presidential election as their "clear candidate of choice," with 89.3% of Black voters statewide supporting Biden. GX-2 ¶ 16. Similarly, Dr. Palmer found that 82.2% of white voters supported Donald Trump as their candidate of choice. *Id.*

246. In 18 of the 22 elections analyzed, where there was a clear Black candidate of choice, Dr. Palmer found that the 18 Black candidates of choice received an estimated 91.4% of the vote from Black voters. GX-2 ¶ 18. Similarly, in 21 of the 22 elections analyzed where there was a clear white candidate of choice, Dr. Palmer found that the white candidate of choice received 81.2% of the vote from white voters. *Id.*

247. Defendants' racially polarized voting expert Dr. Tumulesh Solanky does not dispute these conclusions as to the second *Gingles* precondition. May 11 Tr. 51:3-7, 55:6-11.

248. Another of Defendants' racially polarized voting experts, Dr. John Alford, identified no errors in either Dr. Palmer's or Dr. Handley's methodology or application of ecological inference. May 12 Tr. 152:6-18. Indeed, Dr. Alford replicated selected results from their analyses, which matched their results very closely. LAG_1 at 2-3; May 12 Tr. 152:19-153:6.

249. Ultimately, Dr. Alford agreed that, in general, Black Louisianians cohesively vote for the same candidates. LAG_1 at 9 ("White Democratic candidates draw cohesive support from Black voters just as Black Democratic candidates do."); May 12 Tr. 153:7-10.

250. Based on the expert reports and testimony provided in this case, the Court concludes that Black voters in Louisiana, including in the area where Mr. Fairfax and Mr. Cooper have proposed to draw an additional majority-Black congressional district, are politically cohesive.

2. Third *Gingles* Precondition: Bloc Voting

251. The Court finds that Dr. Handley and Dr. Palmer established that white voters in Louisiana vote sufficiently as a bloc to usually defeat Black-preferred candidates.

252. The Court finds that white voters have been highly cohesive in voting as a bloc to usually defeat the Black-preferred candidate in Louisiana. The average percentage of white voter support for Black-preferred candidates across the prior statewide contests was just 11.7%. PR-12 at 8; Appendix A. "No Black candidate preferred by Black voters was elected to statewide office" in the fifteen elections examined by Dr. Handley. *Id.*

253. Per Dr. Handley's analysis, the Court also finds that in congressional contests, white voters were highly cohesive in voting as a bloc to defeat Black-preferred candidates in every district except the majority-Black Congressional District 2. PR-87, Revised Appendix B. In the congressional elections examined in all districts other than Congressional District 2, the Black-

preferred candidate was defeated by the white-preferred candidate despite obtaining strong support from Black voters. PR-12 at 8-9.

254. The Court finds that support among white voters for the Black-preferred candidate in past congressional elections has been very low. In the past two elections examined in Congressional District 5, the support of white voters for the Black preferred candidate in past Congressional elections was 4.8% and 4.5%, respectively. PR-87, Revised Appendix B.

255. Dr. Handley also analyzed racial bloc voting patterns under the enacted plan, HB 1. Apart from Congressional District 2, which remains the only majority-Black district under the enacted plan, average white support for the Black-preferred candidate did not rise above 15% for any election contest evaluated, including those with only two candidates. PR-12 at 14; PR-92 at Corrected Table 7. Moreover, the probability of a Black-preferred candidate winning a two-candidate election was 0% for every district under the Legislature's enacted plan except Congressional District 2. PR-12 at 11; PR-92 at Corrected Table 4.

256. Likely support among white voters for the Black-preferred candidate in the enacted map in all congressional districts is very low. PR-92 at Corrected Table 7. The average white support for Black-preferred candidates in enacted Congressional District 5 ranged from 7.7% to 9.9%. *Id.*

257. Per Dr. Handley's analysis, the Court finds that in the any future contests under the enacted plan, white voters will vote as a bloc to defeat the Black-preferred candidate in all congressional districts but Congressional District 2. PR-12 at 11; PR-92 at Corrected Table 4. The Court concludes that none of the districts in HB 1 other than Congressional District 2 would allow Black voters the opportunity to elect the candidate of their choice.

258. By contrast, under *Robinson* Illustrative Plan 1, Dr. Handley concluded that the Black-preferred candidate is likely to win or advance to a runoff in 80% of all election contests and likely to win 77.8% of all two-candidate contests in illustrative Congressional District 5. PR-12 at 13. Under *Robinson* Illustrative Plans 2 and 2A, Dr. Handley similarly concluded that the Black-preferred candidate is likely to win or advance to a runoff in 86.7% of all election contests conducted in the proposed District 5, and likely to win 77.8% of all two-candidate contests. PR-87 at 6; PR-91 at 3.

259. Dr. Palmer independently reached similar conclusions based upon a review of different (but equally appropriate) past elections. In the 18 elections where there was a clear, Black-preferred candidate, white voters had a different candidate of choice and were highly cohesive in voting in opposition to the Black candidate of choice in those races. On average, Dr. Palmer found that white voters supported Black-preferred candidates with 20.8% of the vote. GX-2 ¶ 18. And in 17 of the 18 elections where there was a clear Black-preferred candidate, white voters strongly opposed Black voters' candidates of choice; only 17.1% white voters supported the Black-preferred candidate. *Id.* ¶ 19, Figure 2.

260. The same was true even in elections without a clear Black-preferred candidate of choice. In three of the four elections without such a candidate, the white-preferred candidate of choice defeated their opponents in the primary. GX-2 ¶ 20.

261. Dr. Palmer also found that in all congressional elections, Black-preferred candidates were generally unsuccessful in every district except for Congressional District 2, Louisiana's only majority-Black congressional district. May 9 Tr. 309:4-13.

262. Based on the expert reports and testimony provided in this case, the Court concludes that white voters in Louisiana, including in the area where Mr. Fairfax and Mr. Cooper

have proposed to draw an additional majority-Black congressional district, vote as a bloc to usually defeat Black-preferred candidates, and that Black voters in Plaintiffs' illustrative Congressional District 5 would be able to elect their candidates of choice.

263. Dr. Alford did not dispute that, in general, Black and white Louisianians prefer different candidates and that white-preferred candidates defeat Black-preferred candidates except in majority-Black districts. May 12 Tr. 153:19-154:7.

264. Although Defendants put forth several experts to challenge Plaintiffs' evidence as to *Gingles* Three, the Court finds their testimony not credible, their conclusions unfounded, and their methodology unsound.

i. Dr. Tumulesh Solanky

265. The Court finds that the *Gingles* Three analysis undertaken by Dr. Solanky is not credible or reliable. Dr. Solanky has no experience in analyzing racially polarized voting patterns, nor did he conduct an ecological inference analysis of voting patterns in this case. May 11 Tr. 210:8-211:6. Ecological inference is the standard accepted statistical methodology used to predict racially polarized voting in a given district. *See* May 12 Tr. 152:15-18 (Dr. Alford testified that ecological inference is the "gold standard" for analyzing racially polarized voting). Dr. Solanky limited his analysis to East Baton Rouge Parish, and, to a limited extent, eighteen other parishes. He did not analyze any congressional districts in the enacted map or any of the Plaintiffs' illustrative maps. *See generally* SOS_4; May 11 Tr. 215:22-216:17.

266. The Court further finds that Dr. Solanky's analysis is not a reliable predictor of racially polarized voting at the congressional district level. Per the unrefuted evidence of Dr. Handley, the population of East Baton Rouge Parish is too small to be predictive of election results at the congressional district level. May 10 Tr. 35:9-37:13. East Baton Rouge Parish is not wholly contained in any congressional district of the enacted map or any of the congressional districts in

Plaintiffs' illustrative maps. PR-15; PR-16; PR-86; PR-90; GX-1; GX-29; May 10 Tr. 29:13-24. Dr. Solanky himself concedes that East Baton Rouge Parish would need to be joined by up to 18 other parishes to form a congressional district under any of the illustrative plans. PR-87 at 1; SOS_4 at 9-11; May 11 Tr. 222:14-24.

267. There is no evidence that the voters in East Baton Rouge Parish make up a majority of voters in any of the congressional districts in either the enacted map or any of Plaintiffs' illustrative plans, whether looking at voting-age population, the population of registered voters, or the past observed populations of actual voters. PR-15; PR-16; PR-86; PR-90; SOS_4 at 5, 7.

268. The Court further finds that voting patterns in East Baton Rouge Parish are not representative of voting patterns in Congressional District 5 as it exists in either the enacted plan or any of Plaintiffs' illustrative plans. Dr. Solanky's own analysis demonstrates that East Baton Rouge Parish is an outlier when compared to the surrounding parishes it would be grouped with in Congressional District 5, either in the enacted plan or any of Plaintiffs' illustrative plans. SOS_4 at 12; PR-87 at 1.

269. The Court therefore agrees with Plaintiffs' expert Dr. Handley and finds that Dr. Solanky's testimony and reports are irrelevant because his analysis was limited to voting patterns in East Baton Rouge Parish and such voting patterns are not representative of voting patterns at the congressional district level. May 10 Tr. 35:9-37:13. Dr. Solanky confirmed that he offered no opinion about majority bloc voting in any congressional district under either the enacted or the illustrative plans, nor did he dispute any of Dr. Handley's conclusions, including that a Black-preferred candidate would win 0% of election contests in the enacted plan's Congressional District 5. May 11 Tr. 215:12-216:4, 218:16-219:25.

270. The Court finds that Dr. Solanky's testimony and reports are not relevant to the question of whether there is racially polarized voting in any congressional district in the enacted map or any of Plaintiffs' illustrative plans, including Congressional District 5.

271. The Court therefore finds that Dr. Solanky's testimony and reports are not relevant to the question of whether there is sufficient white bloc voting to usually defeat the Black candidate of choice.

272. The Court finds the same with respect to the declaration evidence of Joel Watson, Jr., which also discusses voting patterns in East Baton Rouge Parish. SOS_2 at ¶¶ 8-9.

ii. Dr. Jeffrey Lewis

273. The Court declines to credit the testimony of Dr. Jeffrey Lewis for several reasons.

274. First, Dr. Lewis's hypothetical about the voting patterns in illustrative Congressional Districts 2 and 5 is flawed in assuming that all white crossover voters would vote for the white-preferred candidate if they did not support the Black preferred candidate. GX-30 ¶¶ 6-7; May 9 Tr. 326:25-328:18 (Dr. Palmer's testimony critiquing Dr. Lewis's hypotheticals). Therefore, his calculations about the percentage of Black votes needed for the Black candidate of choice to prevail in these illustrative plans are not reliable.

275. Second, Dr. Lewis offers conclusions about the percentage of Black votes needed to elect Black candidates of choice in illustrative Congressional Districts 2 and 5 based on his analysis of just one exogenous election. LEG_02. All experts, including Dr. Lewis, agreed that analysis of voting patterns in more than one election is needed form a complete and reliable opinion voting patterns in Louisiana. LEG_02 at 6; May 12 Tr. 192:13-193:3; May 10 Tr. 35:18-24; May 9 Tr. 326:9-20.

276. Dr. Lewis explicitly attested that he did not complete a fulsome analysis that would be capable of generally predicting the degree to which Black-preferred candidates could prevail in

the absence of white crossover voting in Plaintiffs' illustrative plans. LEG_02 at 5; May 12 Tr. 184:18-185:8.

277. The Court finds that the evidence from Dr. Lewis's report and testimony has no relevance to the inquiry before it, which is to ascertain whether white voters in Louisiana currently vote sufficiently as a bloc so as to usually defeat Black-preferred candidates.

278. Based on the expert reports and testimony provided in this case, the Court concludes that white voters in Louisiana, including in the area where Mr. Fairfax and Mr. Cooper have proposed to draw an additional majority-Black congressional district, vote as a bloc to usually defeat Black-preferred candidates, and that Black voters in Mr. Fairfax's and Mr. Cooper's illustrative Congressional District 5 would be able to elect their candidates of choice.

C. Totality of Circumstances

279. The Court finds that each of the relevant Senate Factors—which inform Section 2's totality-of-circumstances inquiry—points decisively in Plaintiffs' favor. This finding is supported by the testimony of the three experts Plaintiffs presented on these issues, as well as testimony by relevant fact witnesses. Defendants offered no experts who addressed the Senate Factors and largely did not dispute the findings of Plaintiffs' experts.

280. Plaintiffs presented the expert report, expert rebuttal report, and testimony of Dr. Allan Lichtman to address the Senate Factors. GX-3; GX-31. Dr. Lichtman has been a professor in American politics at American University for the last 50 years. May 10 Tr. 160:5-161:6. His principal areas of research are American politics, American political history, voting rights, and qualitative and quantitative social sciences. *Id.* Notably, Dr. Lichtman has served as an expert in around 100 cases, his testimony and conclusions being accepted and credited in many of them. *Id.* Of particular note, Dr. Lichtman's testimony was cited authoritatively in the U.S. Supreme Court's decision in *LULAC v. Perry*, 548 U.S. 399 (2006). GX-3 at 4; May 10 Tr. 162:4-13. Dr. Lichtman

has previously testified in Louisiana-specific litigation, including *Terrebonne Parish Branch NAACP v. Jindal*, 274 F. Supp. 3d 395 (M.D. La. 2017), in which the Court credited his Senate Factors analysis. The Court has accepted Dr. Lichtman as qualified to testify as an expert in the fields of American politics, American political history, voting rights, and qualitative and quantitative social sciences. May 10 Tr. 157:9-15. The Court finds Dr. Lichtman credible, his analysis methodologically sound, and his conclusions reliable. The Court credits Dr. Lichtman's testimony and conclusions.

281. Plaintiffs also presented the expert report and testimony of Dr. Burch. PR-14. The Court has accepted Dr. Burch as qualified to testify as an expert in the fields of political behavior, political participation, and barriers to voting. May 10 Tr. 104:8-12. Dr. Burch has been a professor of political science for nearly 15 years, and has previously testified in four other court cases. *See* PR-14 at 61, 69-70; May 10 Tr. 103:8-12. The Court finds Dr. Burch credible, her analysis methodologically sound, and her conclusions reliable. The Court credits Dr. Burch's testimony and conclusions.

282. Plaintiffs also presented the expert report and testimony of Dr. Gilpin. PR-13. The Court has accepted Dr. Gilpin as qualified to testify as an expert in the field of Southern history. May 10 Tr. 221:17-25. Dr. Gilpin has been a professor for over 10 years and has written chapters and volumes that have covered the history of voter registration in Louisiana. PR-13 at 53; May 10 Tr. 221:6-12. The Court finds Dr. Gilpin credible, his analysis methodologically sound, and his conclusions reliable. The Court credits Dr. Gilpin's testimony and conclusions.

1. Senate Factor One: History of Voting-Related Discrimination

283. The Court finds that Louisiana has an extensive and well-documented history of discrimination against its Black citizens that has touched upon their right to register, vote, and otherwise participate in the political process. Discriminatory voting practices in Louisiana "have

been extensively documented by historians and plainly admitted to by Louisiana's lawmakers across its 210-year statehood." PR-13 at 2. As demonstrated by Dr. Gilpin in his expert report and trial testimony, these practices are "the defining characteristics of Louisiana politics." May 10 Tr. 232:21-233:2. Defendants do not challenge this history, *see generally* Rec. Doc. No. 101, 108, and Legislative-Intervenors concede Louisiana's "sordid history of discrimination." Rec. Doc. No. 109 at 20.

284. This history has been well documented by other federal courts. *See generally Clark v. Roemer*, 777 F. Supp. 445 (M.D. La. 1990) (acknowledging racially polarized voting patterns in multimember judicial districts statewide and finding that the multimember system minimized or canceled out Black voters' ability to elect their preferred candidates); *Major v. Treen*, 574 F. Supp. 325, 339-41 (E.D. La. 1983) ("Louisiana's history of racial discrimination, both de jure and de facto, continues to have an adverse effect on the abilities of its black residents to participate fully in the electoral process."); *Clark v. Edwards*, 725 F. Supp. 285, 295 (M.D. La. 1988) (taking judicial notice of Louisiana's history of racially polarized voting, official acts of discrimination, racial campaign appeals, the low number of Black lawyers elected to judgeships, and other racial disparities in Black voters' ability to participate in the democratic process); *Chisom v. Edwards*, 690 F. Supp. 1524, 1534 (E.D. La. 1988) (taking judicial notice of state-implemented stratagems designed to "suppress black political involvement," including "educational and property requirements for voting, a 'grandfather' clause, an 'understanding' clause, poll taxes, all-white primaries, anti-single-shot voting provisions, and a majority-vote requirement," and recognizing modern-day racially polarized voting); *Terrebonne Parish NAACP v. Jindal*, 274 F. Supp. 3d 395, 442 (M.D. La. 2017) ("[i]t is indisputable that Louisiana has a long history of discriminating against black citizens.").

a. Racial Hierarchies and Suppression of the Franchise in Antebellum Louisiana

285. Voter discrimination in Louisiana took root in and stems from the imposition of racial hierarchies in antebellum Louisiana. May 10 Tr. 223:24-224:17.

286. In pre-American and antebellum Louisiana, the government within the state sought to consolidate and maintain white supremacy in an effort to bolster the economy premised on subjugation and slavery. PR-13 at 3. Antebellum Louisiana built a "hermetic seal of laws differentiating between racial and ethnic categories." *Id.* at 4; PR-88 at 1. Louisiana's white elites sought to define and restrict the freedoms of the state's sizable population of free Black people, and regulations were imposed forbidding free people of color from holding meetings without the presence of a white person. PR-13 at 11; PR-88 at 1.

287. While Black voting remained an impossibility until the enactment of the Reconstruction Amendments, the 1840s and 1850s saw the state's first experiments with voter disenfranchisement more broadly. In response to "a perceived flood of immigrants that would shift the political status quo," populations that white elites found undesirable, the state created hurdles—including taxpaying and residency requirements—while eliminating requirements for white voters in order to expand the size of the white voting population. PR-13 at 10. As Dr. Gilpin discussed in his report and on the stand, "[t]hese were the exact methods (refashioned for Black voters) Louisianan leaders would revisit and revive two decades later when the fearsome potential of Black voting power threatened white political control." *Id.*; *see also* May 10 Tr. 223:24-224:17 ("[P]roperty requirements, poll taxes, and things like this, literacy tests, were actually developed in the 1840 and'50s and then repurposed later.").

b. Targeted Efforts Against Black Voters in Reconstruction Louisiana

288. The Court finds that the institutions of racial categorization and voter discrimination established in the antebellum period were "carried through . . . intentionally in the Postbellum period" in order to impede the ability of Black citizens to vote. May 10 Tr. 224:18-225:5. Following Reconstruction, however, Louisiana ratified a new Constitution explicitly aimed at establishing "the supremacy of the white race." GX-3 at 9. The first effort to maintain some of the racial hierarchies that white Louisiana had established in the antebellum period was the Black Codes, which were designed explicitly to establish *de facto* slavery by restricting the rights of Black Louisianians to travel within parishes without special permits or be fined and conscripted into forced labor. May 10 Tr. 225:10-20; PR-13 at 15.

289. Political terrorism and violence in service of white supremacy perpetrated by the Ku Klux Klan and its many imitators, including the Knights of the White Camelia, also plagued Reconstruction Louisiana. PR-13 at 17. And yet, these concerted efforts to intimidate and disenfranchise went through almost two decades of sustained failure. PR-13 at 26. Black voting in Louisiana reached its highest in the state's history in 1896, when Black voters made up nearly 45% of registered voters in the state. PR-13 at 28.

290. In response, the state turned to legislative voter disenfranchisement to accomplish what it could not do so through violence alone. The introduction of poll taxes, literacy tests, and other measures introduced nearly seven decades of extreme voter disenfranchisement for nearly all Black citizens in the state. PR-13 at 26-27. Among these modes of voter disenfranchisement, perhaps the most blatant was the Grandfather Clause, which was created by Louisianians in 1898 [and] establishe[d] a rule where Black voters had to establish that either their father or grandfather had voted before January 1, 1867. May 10 Tr.225:20-226:7; GX-3 at 9. In justifying this and other

restrictions, the president of the constitutional convention at which they were enacted said, "Doesn't it let the white man vote, and doesn't it stop the negro from voting, and isn't that what we came here for?" GX-3 at 9-10.

291. Dr. Gilpin testified that the Grandfather Clause alone rendered Black voting virtually impossible, as no Black citizen had the right to vote prior to that date. May 10 Tr. 225:20-226:7. As a result, Black voting numbers plummeted from 130,000 to fewer than 5,320 in just two years. PR-13 at 29; May 10 Tr. 226:11-15; GX-3 at 10. Though the Grandfather Clause was struck down in *Guinn v. United States*, 238 U.S. 347 (1915), by that time Louisiana had developed and instituted myriad strategies to disenfranchise voters, ranging from the Understanding Clause to registration purges to denying access to the ballot if a Black voter "could not count the number of jelly beans in a jar that was at the polling station." May 10 Tr. 227:3-5.

292. The Understanding Clause required an applicant to "'give a reasonable interpretation' of any section of the federal or state constitution in order to vote." *Bossier Par. Sch. Bd. v. Reno*, 907 F. Supp. 434, 455 (D.D.C. 1995) (three-judge court) (Kessler, J., concurring in part and dissenting in part), *vacated on other grounds*, 520 U.S. 471 (1997). It was enforced until 1965, when it was invalidated by the U.S. Supreme Court in *Louisiana v. United States*, 380 U.S. 145 (1965).

293. As a result of the State's innumerable and successful efforts to restrict the franchise, the Court finds that the Black vote was all but eliminated during the first half of the 20th century. "From 1910 until 1948, less than 1% of Louisiana's voting-age African American population was able to register to vote." PR-13 at 30. By the time the Voting Rights Act of 1965 was enacted, only one-third of Louisiana's Black population was registered to vote. GX-3 at 10.

c. Official Discrimination after the Voting Rights Act

294. Although the Voting Rights Act alerted both Louisianians and the federal government to attempts to disenfranchise Black voters, official efforts to disenfranchise Black voters remained just as dogged after 1965. May 10 Tr. 227:10-17; PR-13 at 36. Dr. Gilpin testified that the Voting Rights Act's supervision of state practices made the citizens of Louisiana and the federal government aware of these attempts to disenfranchise Black voters and provided a permanent threat of action to combat the continued effort to mute Black Louisianians' political power. May 10 Tr. 227:6-23; PR-13 at 36. From 1965 to 1989, the U.S. Attorney General issued 66 objection letters nullifying over 200 voting changes, and, from 1990 until the preclearance regime was struck down in 2013, the U.S. Attorney General issued an additional 79 objection letters in response to voting related changes in the state. PR-13 at 36. Indeed, by any measure, attempts to dilute Black voting strength in Louisiana remained widespread. PR-13 at 39.

295. In July 1968, following increased Black voter registration due to the Voting Rights Act, Louisiana newly authorized the use of at-large elections for parish police juries—where they had been previously disallowed. GX-3 at 11. At-large elections continue to pose problems for Black Louisianians into the modern day. May 10 Tr. 166:22-167:7.

296. Following the U.S. Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), which invalidated the preclearance formula under Section 5 of the Voting Rights Act, there "has been a pronounced shift to 21st century versions of jelly-bean counting, poll taxes, and literacy tests of the 1910s and 1920s." PR-13 at 47. Voter suppression laws now focus on identification requirements and registration drive bans, but have also expanded to other strategies to impede Black voters. PR-13 at 47. In Louisiana, restricting access to polling places, early voting, and electoral information have all emerged in the last decade as strategies for Black disenfranchisement. *Id*. As recently as 2021, the Justice Department settled with the City of West

Monroe over Voting Rights Act violations related to the West Monroe Board of Alderman employing an at-large voting system that had been proven to disenfranchise Black voters. May 10 Tr. 232:7-20; PR-13 at 47.

297. Taken as a whole, Louisiana's history underscores a sustained hostility to the freedoms of Black people and a continued effort to impose one of the most severe, adaptive, and violent histories in discrimination in voting. PR-13 at 47-48. In sum, Dr. Gilpin's testimony confirmed that official acts to disenfranchise Black Louisianians has been a through-line in the state's history. May 10 Tr. 232:21-233:2.

d. Redistricting-Related Discrimination

298. Redistricting in Louisiana has repeatedly been characterized by racially discriminatory maps. After the 1981 redistricting cycle, a federal court found that the state's congressional plan, which included no majority-Black districts, violated Section 2 by diluting Black voting strength. *See Major*, 574 F. Supp. at 331.

299. The post-1990 round of redistricting was also tainted by Voting Rights Act violations. PR-13 at 44. The Department of Justice objected to the State's legislative redistricting plan and stated that it had "examined the 1991 House redistricting choices in light of a pattern of racially polarized voting that appears to characterize elections at all levels in the state." PR-84 at 2. The Justice Department found that "[i]n seven areas . . . the proposed configuration of district boundary lines appears to minimize black voting strength, given the particular demography of those areas." *Id.* Just two years later, in the *Chisom v. Roemer* cases, five Black voters in Orleans Parish filed a class action suit on behalf of all Black voters registered in the parish alleging that electing two at-large supreme court justices from Orleans, St. Bernard, Plaquemines, and Jefferson Parishes violated the Voting Rights Act. PR-13 at43. The state eventually settled the litigation in

1992, creating a majority-Black district in the state's supreme court plan, which to date is the only district from which a Black justice has been elected. *Id.*

300. Local jurisdictions in the state have repeatedly been the subject of Section 5 objections and findings of liability under Section 2 of the Voting Rights Act. PR-13 at43-45.

301. In June 2018, the U.S. Commission on Civil Rights found that an analysis of polling places in Louisiana showed that there were fewer polling locations per voter in an area with more Black residents. GX-3 at 14. Caddo Parish, the fourth-most populated parish in the state with the third-highest Black population, had only one polling location for its 260,000 residents. *Id.*

302. "Taken as a whole, the two halves of the history of Louisiana underscore a profound and sustained hostility to the freedoms of Black people. . . . Since the *Shelby County* ruling in 2013, Louisiana has continued in the part established after 1898, 'having one' of the most severe, adaptive, and violent histories of discrimination in voting." PR-13 at 49-50.

e. Discrimination in Areas Related to Voting

303. Dr. Lichtman also testified about state-sponsored discrimination in areas that impact voting for Black Louisianians—including and especially felon-disenfranchisement laws.

304. During the 1898 constitutional convention, Louisiana established a split-verdict law in criminal trials that prevailed in the state until 2018, with slight modifications. Under this rule, a defendant did not need a unanimous verdict of 12 jurors to be convicted of a crime—only nine votes for conviction were necessary. The purpose of this rule was to ensure that the votes of Black jurors would be insignificant. GX-3 at 19.

305. In 1973, the rule was modified to require a vote of 10 jurors out of 12, rather than the former nine. GX-3 at 20. Dr. Lichtman points out that a study by *The Advocate* of 933 cases over six years found that Black defendants were more adversely impacted by this rule: 43% of

convictions with Black defendants occurred in split-verdict cases, compared to 33% of convictions with white defendants. *Id.* The rule was finally eliminated by referendum in November 2018. *Id.*

306. Dr. Lichtman also found that, in 2016, 108,035 felons and former felons were disenfranchised in Louisiana, 68,065 of whom (63%) were Black. Some 6% of the Black adult population in Louisiana was disenfranchised. In 2018, the state modified this law to authorize voting by persons who have been under parole or probation for five years or more. GX-3 at 16.

307. As Dr. Lichtman explained at the hearing, felon-disenfranchisement laws have lingering effects: in addition to denying the vote to incarcerated individuals and those on parole or probation, there is no automatic restoration of voting rights in Louisiana, requiring former prisoners to navigate a complex process to ensure reintegration into political participation. May 10 Tr. 165:17-23.

308. Dr. Lichtman's report also demonstrates that six out of nine Louisiana metropolitan areas were above the national median for Black-white segregation; those six areas—including New Orleans and Baton Rouge—contain about 85% of the state's Black population. GX-3 at 26. Similarly, most of Louisiana's public schools remain segregated. *Id.* at 26-27.

2. Senate Factor 2: Racially Polarized Voting

309. The Court finds that voting in Louisiana is starkly polarized on racial lines. Indeed, this conclusion is not disputed by Defendants' experts.

310. "Racially polarized voting is when voters of different racial or ethnic groups prefer different candidates such that a majority of Black voters vote one candidate and a majority of white voters vote the opponent." May 9 Tr. 309:23-310:2.

311. As discussed above, *see supra* Part IV.B-C, voting in Louisiana is racially polarized because Black and white voters vote consistently support different candidates. There is no factual dispute about the existence of general racial polarization in Louisiana.

312. Defendants have not demonstrated that partisanship, as opposed to race, is responsible for polarized voting patterns in Louisiana. Defendants' evidence on this point ignores the showing made by Dr. Handley and Dr. Burch that partisan affiliations in Louisiana are strongly driven by race and racial attitudes. *See generally* PR-87; PR-89; GX-31. Dr. Alford testified that polarized voting in Louisiana is attributable to partisanship and not race. May 12 Tr. 160:6-161:12. But he simply looked at the results reported by Drs. Palmer and Handley and drew a different inference. *Id.* at 162:20-164:12. In his expert report, Dr. Alford concluded, "The [polarized] voting may be correlated with race, *but whatever accounts for the correlation*, the differential response of voters of difference races to the race of the candidate is not the cause." LAG_1 at 9 (emphasis added). This conclusion reveals that Dr. Alford does *not* know what precisely causes the polarized voting in Louisiana—and he conceded on the stand that voters might be motivated by various factors, including race. May 12 Tr. 165:5-12. Dr. Alford did *not* conduct any sort of inquiry into the reasons Black voter support Democratic candidates or otherwise assess the degree to which race and party are intertwined, *id.* at 160:17-161:18. Nor did Dr. Alford rebut or even address Dr. Lichtman's findings regarding racially polarized voting and the inextricability of race and party. *Id.* at 156:22-157:9.

313. Moreover, while Dr. Alford claims that voters did not respond differently based on the race of the candidates, Dr. Palmer testified that this was not the case: he found that "[a]cross the 18 elections where there's a black preferred candidate, in 9 of those elections the black preferred candidate is black and in 9 of those elections the black preferred candidate is white. And if you average across that full sample, I find that white voters support white [] black preferred candidates by about 10 percent more of the vote than they support the black preferred candidate when that candidate is black." May 9 Tr. 325:13-22. Similarly, Dr. Palmer found that "black voters

also support the black preferred candidate with a slightly higher voter share, about 4 or 5 percentage points when the candidate is black than when the black preferred candidate is white." *Id.* at 325:23-326:2. Accordingly, Dr. Alford's assertion that Louisiana voters did not respond differently based on the race of candidates is incorrect.

314. Other courts have discounted Dr. Alford's analyses for similar reasons. *See, e.g.*, *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, Nos. 1:21-CV-5337-SCJ, 1:21-CV-5339-SCJ, 1:22-CV-122-SCJ, 2022 WL 633312, at *57 (N.D. Ga. Feb. 28, 2022) ("The Court cannot credit [Dr. Alford's] testimony. . . . The basis for his testimony was only Dr. Alford's conclusion that Black voters overwhelmingly prefer Democratic candidates and white voters overwhelmingly support Republican candidates. But Dr. Alford did not perform his own analyses of voter behavior . . . . In fact, there is no evidentiary support in the record for Dr. Alford's treatment of race and partisanship as separate and distinct factors affecting voter behavior. Nor is there any evidence—aside from Dr. Alford's speculation—that partisanship is the cause of the racial polarization identified by Dr. Palmer. Dr. Alford himself acknowledged that polarization can reflect both race and partisanship, and that 'it's possible for political affiliation to be motivated by race.' All this undermines Dr. Alford's insistence that partisanship rather than race is the cause of the polarization." (citations omitted)); *NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 381 (S.D.N.Y. 2020) ("[Dr. Alford's] testimony, while sincere, did not reflect current established scholarship and methods of analysis of racially polarized voting and voting estimates."), *aff'd sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021); *Texas v. United States*, 887 F. Supp. 2d 133, 181 (D.D.C. 2012) (three-judge court) ("[T]he fact that a number of Anglo voters share the same political party as minority voters does not remove those minority voters from the protections of the VRA. The statute makes clear that this

Court must focus on whether minorities are able to elect the candidate of their choice, no matter the political party that may benefit."), *vacated on other grounds*, 570 U.S. 928 (2013); *see also Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 709-13 (S.D. Tex. 2017) (finding in favor of plaintiffs as to second and third *Gingles* preconditions, contrary to Dr. Alford's testimony on behalf of defendant jurisdiction); *Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1401-07 (E.D. Wash. 2014) (similar); *Benavidez v. Irving Indep. Sch. Dist.*, No. 3:13-CV-0087-D, 2014 WL 4055366, at *11-13 (N.D. Tex. Aug. 15, 2014) (similar); *Fabela v. City of Farmers Branch*, No. 3:10-CV-1425-D, 2012 WL 3135545, at *8-13 (N.D. Tex. Aug. 2, 2012) (similar); *Benavidez v. City of Irving*, 638 F. Supp. 2d 709, 722-25, 731-32 (N.D. Tex. 2009) (similar).

315. Given the lack of substantive analysis on Dr. Alford's part, and the conclusions of previous courts, the Court does not credit Dr. Alford's racially polarized voting analysis. Neither his analysis nor the reports of any of Defendants' other witnesses change the Court's finding that voting in Louisiana is racially polarized.

316. By contrast, Plaintiffs' experts provided strong evidence that polarization in Louisiana can be explained in large part by racial identity and racial attitudes. For example, Dr. Gilpin documents the historical alliance of Black Louisianians with the Republican Party prior to the Civil Rights Era. PR-13 at 71-21. In or around 1865, the Louisiana Democratic Party platform explicitly set out that "people of African descent cannot be considered as citizens of the United States and that there can, in no event, nor under any circumstances, by any equality between the white and other races." *Id.* at 16. In 1868, the Ku Klux Klan served deliberately as the paramilitary wing of the Democratic Party. *Id.* at 18. By contrast, it was the Louisiana Republican Party that championed Black suffrage and, consequently, earned Black political support. *Id.* at 18-19, 22-23; GX-3 at 28. Dr. Lichtman found much the same, explaining that during Reconstruction, Black

voters were overwhelmingly Republican while white voters were overwhelmingly Democratic. GX-3 at 28.

317. In her supplemental report, Dr. Burch explains that this historical alliance began to dissolve in the post-New Deal party system, as Democrats became identified with racial liberalism while Republicans became associated with racial conservatism. PR-89 at 2. Dr. Burch examines voter registration data and notes that research shows that the exodus of southern white voters from the Democratic Party from 1958 to 1980 was a reflection of racial attitudes. *Id.* Louisiana's voting patterns were consistent with this larger pattern of white voters defecting from the Democratic Party during and immediately after the Civil Rights era. *Id.* at 3-4. Dr. Burch concludes that "[t]he most important trend in voter registration in the South during the last 25 years has been the defection of White voters from the Democratic party" because of the party's association with racial liberalism and Black candidates. *Id*.

318. Dr. Lichtman similarly charted this realignment to the mid-20th century, explaining that the bipartisan enactment of the Voting Rights Act of 1965 was the catalyst to a political party realignment based on race that began brewing nearly 30 years prior. Dr. Lichtman explained that "the parties reversed their traditional roles in [Louisiana] with Democrats now associated with racial values, policies, and attitudes appealing to Blacks and Republicans the reverse." GX-3 at 29. As he concluded, "party identification is conjoined with race, although party labels had come to mean the opposite of what they once were." *Id.* In essence, he explained, "[p]arty labels by themselves are meaningless. They are just labels. What matters is what those labels represent." May 10 Tr. 167:18-21.

319. Dr. Handley also provided evidence of the "Southern realignment," or "the shift of white voters from overwhelming support for the Democratic party to nearly equally strong support

for the Republican party." PR-87 at 4. Dr. Handley noted this shift is directly traceable to the Democratic party's support for civil rights legislation beginning in the 1960s. *Id.* Dr. Handley cites several studies demonstrating that the increasing divide between Black and white voters and their support for the Democratic and Republican Parties, respectively, is linked to racial attitudes and the parties' positions on race-related issues. *Id.* at 4 n.7. Dr. Alford also acknowledged during his testimony that the Democratic and Republican Parties in Louisiana are currently "dug into their opposition to each other," including on issues related to race. May 12 Tr. 164:12-22.

320. Dr. Lichtman further explained that the party realignment along racial lines is buttressed by the attitudes and beliefs held by Democratic and Republican elected officials and voters. GX-3 at 31. Dr. Lichtman noted that reports from civil rights organizations indicate "that there is extreme polarization between the positions taken by Republican leaders, legislators in the Congress and [] position[s] taken by Democrats." May 10 Tr. 168:9-21. Moreover, Dr. Lichtman reported survey results indicating that 16% of Republicans believe that Black people are treated less fairly than whites in the workplace, compared to 77% of Democrats who believe the same. GX-31 at 4. Similarly, 12% of Republicans believe that Blacks are treated less fairly when applying for a mortgage or other loan, compared to 71% of Democrats, *id.*, while 77% of Louisiana Democrats believe that white people have certain societal advantages because of the color of their skin, compared to only 6% of Louisiana Republicans who believe the same, GX-3 at 32.

321. Ultimately, Dr. Lichtman explained that Black and white voters in Louisiana largely vote the way they do *because* of race, not in spite of it. May 10 Tr. 170:22-171:1. He concluded that race is the "driving mechanism" of polarized voting in Louisiana and that party, by itself, explains nothing. *Id.* at 170:12-21.

322. In essence, partisan affiliation in Louisiana among Blacks and whites is not static; it has historically inversed along racial lines depending on the relative positioning of the major political parties on issues pertaining to Black Louisianians. This evidence undercuts Defendants' argument that partisanship in Louisiana can be examined in isolation as the sole driver of racial bloc voting patterns. Plaintiffs' expert evidence establishes that racial attitudes motivate racially polarized voting patterns in Louisiana and that this divide has only been strengthening in recent years.

323. Plaintiffs' fact witnesses also provided evidence that voting patterns in Louisiana are driven by race and racial attitudes. For example, Ashley Shelton testified that, in her experience as President and CEO of an organization that works to civically engage voters of color, Black voters regularly vote for Democrats not "because they are Democrats" but because Democrats more often take positions favorable to Black Louisianians on the issues that matter to them. May 10 Tr. 256:20-257:5.

324. Election results in Louisiana, as documented by the experts in this case, also demonstrate that voting patterns are motivated by race. Dr. Handley noted the much higher level of white support for Governor Edwards than for any Black Democrat running for statewide office in Louisiana. PR-87 at 3 n.4. Moreover, Dr. Lichtman reported that, in the 2008 Louisiana Democratic presidential primary, 86% of Black voters voted for former President Barack Obama compared to 13% of Black voters for former Secretary of State Hillary Clinton. GX-3 at 32-33. By contrast, 30% of white Democratic voters voted for President Obama while 58% of white voters voted for Secretary Clinton. *Id.* at 33; *see also* May 10 Tr. 172:13-20.

325. Dr. Palmer testified that white voters in Louisiana who vote for Democrats are 10% more likely to vote for white Democratic candidates than for Black Democratic candidates, indicating that racial polarization exists within interparty contests. May 9 Tr. 325:13-326:2.

326. Dr. Solanky's analysis of East Baton Rouge Parish, which Defendants suggest is an anomalous example of white support for minority-preferred candidates, is consistent with this conclusion. Dr. Solanky's analysis shows that, of the eight elections he reviewed, white candidates prevailed in all but one. SOS_5; PR-87 at 2; May 11 Tr. 50:8-20, 57:3-11, 58:25-59:5, 64:22-65:4. And Black candidates lost in East Baton Rouge Parish in three out of the four elections in which they ran. *Id*.

327. The Court finds that partisanship in Louisiana cannot be examined in a vacuum and that racial bias influences racially polarized voting patterns among Black and white voters in the state.

328.

3. Ultimately, the Court concludes that Defendants have not adduced facts to displace the evidence of racial bias in Louisiana voting patterns. Senate Factor 3: Discriminatory Voting Procedures

329. The Court finds that Louisiana has historically enacted a wide variety of discriminatory voting procedures that have burdened Black Louisianians' right to vote, including an open primary system with a majority-vote requirement that is still in force today.

330. Under this system, if a Black candidate wins a plurality of the vote in a white jurisdiction, they will have to face a white-preferred candidate head-to-head in a runoff contest. GX-3 at 34. In such situations, Black candidates rarely win. *Id.*; *see also* May 10 Tr. 173:13-24.

331. Louisiana's majority-vote requirement was put in place in 1975 to protect white incumbents from significant electoral challenges. GX-31 at 7.

332. Dr. Lichtman's report provides three examples of this phenomenon at work in the last seven years—the 2015 race for Lieutenant Governor, when Democrat Melvin Holden advanced to the runoff and lost the election to Republican Billy Nungesser; the 2017 race for Treasurer, when Democrat Derrick Edwards advanced to the runoff and lost the election to Republican John Schroeder; and the 2018 election for Secretary of State, when Democrat Gwen Collins-Greenup won a near plurality in the primary but lost to the Secretary. GX-3 at 34-35; *see also* May 10 Tr. 173:20-174:8.

4. Senate Factor Four: Candidate Slating

333. There is no slating process involved in Louisiana's congressional elections.

334. However, Dr. Lichtman "found something rather interesting, that the way Louisiana set up its congressional redistricting plan, it kind of made slating irrelevant and unavailing for black candidates; that is in District two, which is overwhelmingly packed with black[voters] and Democrats, slating is irrelevant. I[t's] going [to elect a] black [representative]; whereas, the other five districts that are overwhelmingly white and Republican [slating] is equally irrelevant because a black candidate has no chance essentially to win." May 10 Tr. 175:2-175:12.

5. Senate Factor Five: Contemporary Socioeconomic Disparities

335. The Court finds that Black Louisianians bear the effects of discrimination and are socioeconomically disadvantaged relative to white Louisianians across multiple metrics of well-being, including education, economic standing, health, housing, and criminal justice. These disparities hinder the ability of Black Louisianians to participate effectively in the political process.

336. Mr. Cooper provided unrebutted data demonstrating these inequities. The Court finds that Black per-capita income ($19,381) is barely half of white per-capita income ($34,690) in Louisiana, while the Black child-poverty rate (42.7%) is nearly triple the white child-poverty rate (15.0%). GX-1 ¶ 84. White Louisianians are more likely than Black Louisianians to have

finished high school, much more likely to have obtained a bachelor's degree, more likely to be employed, and much more likely to be employed in management or professional occupations. *Id.* Fewer than half of Black Louisianians live in houses they own, compared to 76.6% of white residents, and the average white-owned home is worth above $50,000 more than the average Black-owned home. *Id.* The inequities extend to vehicle access (16.4% of Black households in Louisiana lack access to a vehicle, compared to only 4.7% of white households), computer access (84.3% of Black households have a computer, compared to 91.6% of white households), and internet access (72.6% of Black households enjoy broadband internet connections, compared to 84.3% of white households). *Id.* Mr. Cooper confirmed that white Louisianians enjoy higher levels of socioeconomic well-being than Black Louisianians "across almost every single category." May 9 Tr. 119:5-9.

337. Dr. Burch testified that Black Louisianians are disadvantaged relative to white Louisianians with respect to educational access and attainment. May 10 Tr. 110:21-111:4 ("I concluded that there were still great disparities in education and educational attainment between [B]lack and white Louisianians, not [just] related to these factors that I state here, but also with respect to persistent segregation in education as well[,] and those factors, those disparities are given by both historical and contemporary discrimination in the education realm.").

338. It is indisputable that educational outcomes in Louisiana vary among students by race. For example, Black eighth graders score on average 30 points lower in math and 26 points lower in reading than white eighth graders. PR-14 at 11; May 10 Tr. 109:17-110:6.

339. As recently as 2017, 50% of traditional school districts in Louisiana for which data was available demonstrated high levels of racial segregation within the district. PR-14 at 10; May 10 Tr. 110:21-111:4. School segregation has been shown to detrimentally affect the academic

performance of minority students. Black and Latino students who grew up under conditions of segregation were less academically prepared for college and had been exposed to more violence and social disorder than students coming from majority-dominant settings. *Id.*

340. According to the 2019 1-Year Estimates from the American Community Survey, white and Asian Louisiana adults are far more likely than Black and Latino adults to have earned a bachelor's or postgraduate degree. PR-14 at 7-8; May 10 Tr. 110:9-14.

341. Individual plaintiffs also testified about their own personal experiences with disparate access to education in Louisiana. *See, e.g.*, PR-9 at 3 ("I was one of only a few Black students to graduate from Louisiana State University in 1973"); PR-1 at 2 ("In the 1980s, I was the first Black person to be elected to the East Baton Rouge School Board."); May 9 Tr. 280:5-16 ("My mother was in the third class to integrate to Baton Rouge high school. My father was one of the first black graduates of the LSU law center . . . I grew up here in the '80s and '90s the year I started first grade was the year first year of forced busing in Baton Rouge 1981").

342. There are also "socioeconomic disparities that exist today, and [] those disparities relate to contemporary and historical disparities between Black and white Louisianians." May 10 Tr. 112:13-17. According to data from the 2019 American Community Survey, Black Louisianians are nearly twice as likely to be unemployed as white Louisianians. PR-14 at 12-13.

343. Racial gaps in poverty rates are also large and persistent over time in Louisiana. The Black and Latino poverty rates are more than 2.8 times as high as the white poverty rate. PR-14 at 13, May 10 Tr. 111:23-25; PR-10 at 7 ("[P]overty rates are disproportionately high in Black communities[.]"). And the median income for Black Louisiana households is about $29,000 less than that of white Louisiana households. PR-10 at 7; May 10 Tr. 112:1-4.

344. Dr. Burch wrote and testified regarding the disparities in housing between white and Black Louisianians. "Black Louisianians have been subject to racial residential segregation for generations," including housing policies implemented by the Federal Housing Administration to "redline" Black neighborhoods and prevent lending to Black families. PR-14 at 15-19; May 10 Tr. 113:10-24. "[M]any of the most populous cities and metropolitan areas in Louisiana still are highly segregated by race." *Id.*; *see also* May 10 Tr. 113:22-114:3 ("[T]here is still metro areas and cities in Louisiana that are highly [] segregate[ed] by race and that includes New Orleans, the New Orleans-Metairie metro area, Baton Rouge, the Shreveport-Bossier City and Lake Charles.").

345. Furthermore, contemporary government policies continue to shape where Black and white Louisianians live. For example, neighborhoods damaged by Hurricane Katrina were disproportionately Black, and the delayed timing of disaster relief and rebuilding efforts made it more difficult for Black residents of New Orleans to return to their old homes. PR-14 at 15-19; May 10 Tr. 114:5-19.

346. Dr. Burch testified that Black Louisianians have worse health outcomes than white Louisianians. For instance, 17.7% of Black Louisiana adults have been diagnosed with diabetes, compared with 10.8% of white adults. PR-14 at 8-19. The mortality rate for cardiovascular disease in Louisiana is 260.5 per 100,000 white adults versus 321.5 per 100,000 Black adults. *Id.* And, although rates of invasive cancer are similar across Black and white Louisianians (487.9 per 100,000 adults versus 478.7 per 100,000 adults), there is a significant disparity in the mortality rate from invasive cancers (211.2 deaths per 100,000 adults for Black Louisianians versus 173.6 deaths per 100,000 adults for white Louisianians). *Id.* Furthermore, white Louisianians are more likely to have health insurance than Black Louisianians. PR-14 at 21. These disparities in health translate into disparities in life expectancy. In Louisiana, Black men live on average seven years

less than white men, and Black women live on average five years less than white women. May 10 Tr. 115:3-21. Infant and child mortality is higher for Black Louisianians as well. PR-14 at 20; May 10 Tr. 115:19-20.

347. Dr. Burch reported that environmental factors contribute to these racial health disparities. For example, Black mortality rates during Hurricane Katrina were significantly higher than white mortality rates in Orleans Parish across all age group categories 30 years and older. PR-14 at 21; May 10 Tr. 115:25-116:4. The siting of chemical plants and other environmental hazards near heavily Black residential areas also exposes residents to high levels of air pollution and other dangers. In the area widely known as Cancer Alley, which stretches between New Orleans and Baton Rouge, studies have linked high levels of air pollution to increased risk of cancer, COVID-19, and asthma. PR-14 at 21; May 10 Tr. 116:5-13. Cancer Alley includes numerous unincorporated, predominantly Black neighborhoods that have little say in the decisions to locate factories and refineries near their homes.

348. Black Louisianians are keenly aware of the disparate impacts of the petrochemical industry in Louisiana on their health. Michael McClanahan, President of the Louisiana NAACP, wrote in his declaration that "Louisiana is home to Cancer Alley, where petrochemical plants running along the Mississippi River between Baton Rouge and New Orleans have caused high rates of cancer and respiratory diseases. The rates of illness are disproportionately higher for Black people living in Cancer Alley than for white people." PR-10 at 7. In his testimony, Mr. McClanahan explained that "[t]hose chemical plants, they set up shop in Black neighborhoods where they poison and kill people, every day. . . . They don't live to grow old." May 9 Tr. 35:7-11.

349. The Black incarceration rate in Louisiana is 3.7 times higher than the white incarceration rate. PR-14 at 23. Black Louisianians constitute about two-thirds of Louisiana's prisoners despite constituting only about one-third of the total population, a rate double their presence in the population. *Id.*; May 10 Tr. 117:2-9. Dr. Burch testified that "there are dramatic disparities in the involvement with the criminal justice system between Black and white Louisianians, with Black Louisianians being much worse off and these [] disparities can't be explained by just crime rates alone." May 10 Tr. 117:14-22.

350. The Court finds that the educational, socioeconomic, housing, health, and criminal justice disparities discussed above are a cause of lower political participation rates by Black Louisianians. As Dr. Burch explained in her expert report, there is extensive academic literature demonstrating that education, employment, and other elements of socioeconomic status are leading predictors of voting.

351. For example, data from the data from the 2020 Current Population Survey Voting and Registration Supplement reveals that differences in educational attainment can explain some of the racial gap in voter turnout in Louisiana. PR-14 at 8-9. Several studies have associated poor health with lower voter turnout. PR-14 at 19. The existing literature demonstrates that racial segregation in housing detrimentally affects voting. *Id.* And research has shown that contact with the criminal justice system—from police stops, to arrest, to incarceration—directly decreases voter turnout. PR-14 at 22.

352. Dr. Burch testified that political scientists think about the decision to participate in politics as a function of rational choice, and explained that these disparities "tend to make voting much more costly" for Black Louisianians. May 10 Tr. 118:21-23. For example, "it's much more difficult for someone having to navigate bureaucracies and the like if they have lower educational

attainment. It's difficult for people to get to a polling place if they don't have access to a vehicle. . . . People aren't allowed to vote if they are serving a sentence in prison, for instance, and so all of these factors are interrelated, but also definitely have an effect on political participation and the literature shows that quite clearly." May 10 Tr. 118:24-13; *see also id.* 240:24-241:3 ("Q. So is it fair to say that lack of access to transportation makes it harder for black Louisianians to participate in the political process? A. Yes.").

353. As a result, Black Louisianians participate in the political process at substantially lower rates than white Louisianians. According to the 2020 Current Population Survey Voting and Registration Supplement, 64% of white Louisianians reported that they voted in the 2020 general election, compared with only 58% of Black Louisianians. PR-14 at 8-9.

354. Dr. Lichtman confirmed these findings, noting that lack of vehicle access makes it more challenging to travel to polling places; the transience that results from lack of home ownership results in changing polling locations; and lower levels of education and internet access make it more difficult to learn and navigate voting procedures. GX-3 at 36-37.

355. Dr. Lichtman further explained that reduced political participation by Black Louisianians is demonstrated not only by lagging voter turnout, but also reduced lobbying of public officials and reduced political contributions. May 10 Tr. 177:14-178:18.

356. The Court credits these experts and agrees with Dr. Lichtman's finding that "[p]erpetuated and solidified racial segregation, which is evident in Louisiana, magnifies the effects of discrimination on the socioeconomic standing of minorities, which impacts their ability to participate fully in the political process and elect candidates of their choice." GX-3 at 37. Defendants offered no evidence to the contrary.

6. Senate Factor Six: Racial Appeals in Louisiana Campaigns

357. The Court finds based on the undisputed evidence at the hearing that Louisiana's political campaigns have been characterized by both overt and subtle racial appeals.

358. Louisiana has a long and sordid history of racial appeals in political campaigns that continues to this day. Dr. Burch's and Dr. Lichtman's expert reports discuss some of the most egregious racial appeals in Louisiana politics, including that of David Duke, a former Grand Wizard of the Ku Klux Klan who ran for statewide election multiple times on platforms that openly appealed to white racial fears. PR-14 at 26. Duke won a strong majority of Louisiana's white vote in a 1990 U.S. Senate race, a 1991 gubernatorial open primary, and a 1991 gubernatorial runoff. *Id*.; GX-3 at 39. Duke also endorsed other Louisiana political candidates, such as Governor Mike Foster, who received 84% of the white vote and only 4% of the Black vote. *Id*.

359. In the state's 1995 gubernatorial race, Governor Foster—who defeated then-Congressman Cleo Fields, the first Black Louisiana gubernatorial candidate in more than a century—noted that the predominantly white Jefferson Parish "is right next to the jungle in New Orleans and it has a very low crime rate." GX-3 at 39-40. Scholars found that "symbolic racism was an important determinant of vote choice in the 1995 Louisiana gubernatorial election, even after controlling for partisanship and ideology." *Id.* at 40.

360. In 2011, Lieutenant Governor candidate Billy Nungesser ran an ad called "Sleepless in Louisiana," in which he attacked his opponent for failing to protect Louisianians from having their jobs stolen by illegal immigrants. GX-3 at 41. And in 2014, Congressman Steve Scalise—the U.S. House Republican whip—admitted that, while serving as a Louisiana state representative in 2002, he had addressed a white supremacist group founded by David Duke. *Id.*

361. Racial appeals were also featured in Louisiana's two most recent gubernatorial elections. In 2015, Republican gubernatorial candidate David Vitter released a campaign ad that,

as Dr. Lichtman observes, was "reminiscent of the notoriously racist Willie Horton ad." GX-3 at 42. The ad pictured now-Governor Edwards alongside former President Barack Obama and warned that "Edwards joined Obama" in promising to release "[f]ifty-five hundred dangerous thugs, drug dealers, back into our streets." *Id.*

362. In the 2019 gubernatorial race, Eddie Rispone, the Republican candidate, produced a campaign ad that began with a prominent display of mugshots of Black men and other men of color in which he blamed Governor Edwards for crimes committed by people after early release from prison. PR-14 at 26. The images were juxtaposed with all-white images of Rispone with his constituents. *Id.*; May 10 Tr. 121:9-21.

363. In that same campaign, Edwards's supporters ran ads targeting Black voters, arguing that Rispone supported Donald Trump and calling Trump a racist. PR-14 at 27. In response, Rispone and the Louisiana Republican Party accused Edwards of racism and argued that he was taking part in a "family tradition" of taking advantage of Black Louisianians. *Id.*

364. Dr. Burch's report shows that messages like these are designed to demobilize Black voters by portraying their chosen candidate or party as insensitive to the group's needs. PR-14 at 27. She further testified at the preliminary injunction hearing that, based on the numerous elections she examined, "there are still racial appeals that characterize [] political campaign[s]" in Louisiana. May 10 Tr. 122:2-4.

7. Senate Factor Seven: Underrepresentation of Black Louisianians in Elected Office

365. The Court finds based on the undisputed evidence at the hearing that Black Louisianians have been historically underrepresented in elected office—a trend that continues to this day.

366. As Dr. Lichtman and Dr. Burch report, not a single Black candidate has been elected to statewide office in Louisiana since Reconstruction. GX-3 at 46-47; PR-14 at 6. Since 1991, only four Black Louisianians have represented the state in Congress, and only once—from 1993 to 1997—have two Black Louisianians served in Congress at the same time. *Id.* at 47. A Black Louisianian has never been elected to Congress from a non-majority-Black district. *Id.*

367. Since 1990, the percentage of Black members of the Legislature has remained relatively constant. GX-3 at 47. Despite comprising one-third of the state's population, Black legislators constitute only 23.1% of the Louisiana State Senate and 22.9% of the Louisiana House of Representatives. *Id.* Currently, all Black members of the Legislature were elected from majority-Black districts. *Id.* at 47-48.

368. Black Louisianians are also underrepresented among elected officials at other levels of government, including among executives (such as Governor, Lieutenant Governor, and mayors) and judges. PR-14 at 6; May 10 Tr. 123:2-14. Indeed, less than 25% of Louisiana mayors are Black. PR-14 at 28; May 10 Tr. 123:8-11.

369. Black Louisianians are also underrepresented in the state's judiciary. GX-3 at 48. According to a 2018 study by researchers at the Newcomb College Institute of Tulane University, Black Louisianians comprised just 23.4% of the state's judges. *Id.* Only one Black justice sits on the Louisiana Supreme Court. *Id.* at 48-49. Of the 42 district courts in the state,

8. Senate Factor Eight: State Nonresponsiveness

370. The Court finds based on the undisputed evidence at the hearing that there is a significant lack of responsiveness on the part of elected officials to the particularized needs of Black Louisianians.

371. Dr. Burch's expert report demonstrated that Black Louisianians disproportionately suffer from the effects of racial discrimination across many areas, including health, housing,

employment, education, and criminal justice. PR-14 at 7-25. In each of these areas, racial disparities are indicative of a failure on the part of elected officials to address the needs of Black residents. Persistence of these severe racial disparities over time demonstrates that public officials are not responsive to the needs of Louisiana's minority communities. Dr. Lichtman similarly found that Louisiana has failed its Black citizens in the areas of public education, healthcare, the environment, economic opportunity, and criminal justice. GX-3 at 50.

372. Despite ranking last in the nation for public secondary and higher education, Louisiana cut its higher education budget by 44.9% from 2008 to 2017—the second highest in the nation. GX-3 at 52. This is only further exacerbated by the fact that private charter schools—which are predominantly white—are being funded by monies allotted for public education. *Id.* at 51.

373. In the area of healthcare, Dr. Lichtman explained that the United Health Foundation and United Health Care ranked Louisiana 48 out of 50 among the states for the health of its senior citizens. GX-3 at 53. Further, Louisiana was one of the last five states to expand Medicaid despite being tied with the state of California for the largest population percentage of citizens eligible for Medicaid or the Children's Health Insurance Program—and having a disproportionately high number of Black citizens who receive Medicaid. *Id.*

374. Dr. Lichtman also noted that Louisiana's dismal response to Black Louisianians' needs for better environmental policy is indicative of official policy that fosters environmental injustice. GX-3 at 56-60. Plaintiffs Michael McClanahan and Dr. Dorothy Nairne each testified to what is known as "Cancer Alley," the strip of petrochemical plants that operate in and around Black neighborhoods—residents there have a 50% higher chance of contracting cancer and dying than those who live in a healthy environment. *Id.* at 57; May 9 Tr. 35:3-36:1; May 10 Tr. 89:9-17.

375. Economically, Louisiana's Black population is predominantly low-income and has the third-lowest average household income among low-income households in the nation. GX-3 at 53-54. Louisiana also has the second-largest wage gap between Black and white workers. *Id.* at 54.

376. As Dr. Lichtman noted, these findings are neither limited nor subjective: "These are areas of fundamental importance to a vulnerable group like African-Americans." May 10 Tr. 185:8-25.

377. Dr. Burch highlighted in her report and during her testimony the ways in which voters explicitly connected the lack of responsiveness of officials to race during last year's redistricting roadshows. PR-14 at 29-32; May 10 Tr. 125:13-18 ("Based on the policies and the persistent gaps that I found with respect to Senate factor five, as well as based on voices of black Louisianians themselves, that black Louisianians publicly elected officials were not responsive.").

378. For instance, at a meeting in Lake Charles, Lydia Larse, a Black resident, said: "We're one-third of the state, and I'm not being represented . . . Our voices are not being heard. At all." PR-14 at 30. At the same roadshow, Jacqueline Germany stated, "I'm sick and tired of a congressman overlooking my district." *Id*. at 31. Voters at the roadshows consistently expressed the opinion that, of Louisiana's current congressional delegation, only Congressman Troy Carter, the congressman representing a majority-minority district, is responsive to the needs of Black Louisianians. For example, at the Baton Rouge roadshow, Melissa Flournoy stated, "We have five hardcore Republican Congressmen, and we have one African-American Congressman who for all intents and purposes, is expect[ed] to represent the voices of African-American voters in Caddo Parish, in East Baton Rouge Parish, in Tallulah, Richland, Tensas, Concordia Parish. Because he's the only congressman that will return the calls, okay?" *Id*.

379. Similarly, at the Alexandria roadshow, Herbert Dixon said of the federal Build Back Better bill, "there should be a Congress person that understand[s] the importance of a $1.2 trillion infrastructure bill that would create vast opportunities for central Louisiana and our state. . . . [Under the bill,] $6 billion would be allocated to Louisiana for roads and bridges. . . . Think what this would mean for Gilchrist Construction Company, Diamond B Construction Company, TL Construction, Madden Construction Company and all other local contractors in our area. . . . Every Louisiana U.S. House Congressional member voted against the $1.2 trillion infrastructure bill, except [the one who] represented a majority-minority congressional district." *Id*. at 29-30.

380. Plaintiffs underscored this message in their declarations and testimony. *See, e.g*., PR-3 at 4 (Dr. Nairne: "I do not get equal access to my Congressional representative when compared to other voters in my district . . . This is not fair, and at times it feels debilitating."), PR-4 at 2-3 (Mr. Soulé: "I have previously met with my Congressperson, Representative Steve Scalise, at a town hall meeting, approximately four years ago. . . . I remember he interrupted me and dismissed what I had to say before I could finish my remarks. He was not responsive to my concerns and did not treat me like a constituent that he represents.").

381. Plaintiffs also noted that they are not alone in feeling their representatives are not responsive to their needs, and that this is a common sentiment in Louisiana's Black community. *See, e.g*., PR-9 at 3 (Mr. Sims: "I know I am not the only one who feels frustrated. My community is under-served and always has been, and folks understandably feel apathetic."), PR-8 at 3 (Ms. Davis: "A lot of people I know feel there is no point in voting because they believe it does not make a difference.").

382. The Court further finds that the dilution of Black voting power in the challenged congressional plan only exacerbates this official nonresponsiveness. Cracking Black voters into districts with significant numbers of competing interests increases the likelihood that elected officials tasked with representing Black voters will be pulled in different directions and consequently less responsive to the particularized needs of the Black community.

383. Matthew Block, who serves as Governor Edwards's executive counsel, testified that the incumbent governor has been responsive to the needs of the state's Black community, supporting Medicaid expansion and criminal justice reform and appointing Black officials to high-ranking positions in the state government. May 11 Tr. 29:23-31:20, 32:15-38:14. But Governor Edwards's responsiveness to Black Louisianians does not change the Court's conclusion as to this Senate Factor. As Mr. Block testified, Governor Edwards's predecessors did not demonstrate similar responsiveness to the Black community. May 11 Tr. 44:11-45:15. And Governor Edwards is not the only elected official responsible for crafting the state's policies on healthcare and other issues. *Id.* at 46:3-9. If anything, Governor Edwards's departures from his predecessors' policies and his commitment to the Black community confirms that Black citizens benefit when allowed to elect their candidates of choice to office.

9. Senate Factor Nine: Tenuousness of Justification for Enacted Map

384. The Court finds that any proffered justifications for HB 1 are tenuous. The Court notes that Defendants called no legislator to testify about the basis for the enacted plan, although, in successfully moving to intervene, the Legislative Intervenors stated that they wished to explore 'the policy considerations underpinning' the enacted plan. Rec. Doc. No. 10 at 10.

385. Dr. Burch's expert report showed that, although the sponsors of HB 1 argued that the map was justified by the importance of population equality, these same sponsors downplayed the importance of this factor once it was shown that a redistricting scheme allowing for two

majority-minority districts was created with lower absolute and relative deviations in population. PR-14 at 33; May 10 Tr. 127:7-128:10.

386. Dr. Burch's expert report also demonstrated that arguments in support of HB 1 based on the favorability of the shape of the districts were based on subjective notions of appearance and eyeball tests, instead of the standard measures of compactness used by courts and demographers. PR-14 at 34-36. These standard measures of compactness showed that, despite the observations of the legislators who supported HB 1, redistricting plans containing two majority-minority districts created districts that were more compact than the districts created by HB 1 but were not supported by these legislators. *Id.*

387. Similarly, Dr. Burch's expert report demonstrates that, while HB 1 does not split any precincts, other redistricting plans, including plans allowing for two majority-minority districts, also keep all precincts intact but were not supported by the supporters of HB 1. PR-14 at 31. The legislature also passed HB 1 over the objections of members of various communities of interest, and the bill's supporters did not provide any rationale for how they determined which communities of interest were prioritized over others. Dr. Burch noted in her report that several maps were introduced that managed to draw two majority-minority districts while splitting fewer parishes and communities of interest than HB 1. PR-14 at 36-40.

388. Dr. Lichtman explained why core retention is not a compelling justification for HB 1: In Louisiana, prioritizing core retention "freezes in the existing packing and cracking under the previous plan. . . . They are freezing in the inequities that you had previously established. In fact, if core retention was the fundamental talisman for redistricting as opposed to other requirements, then there never would have been a remedy for a discriminatory redistricting plan. You would just be replicating that plan over and over and over again like you are doing here." May 10 Tr 186:13-

187:10. Dr. Lichtman further explained that the preclearance of Louisiana's 2011 congressional plan does not indicate the absence of a Section 2 violation; "[i]t simply means that the plan was not [retrogressive] with respect to the previous plan." *Id.* 187:21-23.

389. Dr. Lichtman also demonstrated that HB 1 cannot be justified by compactness, as Congressional District 2's packing of Black voters results in a meandering, unusual shape. May 10 Tr. 187:2-188:25. Nor can that district be justified by an interest in ensuring Black representation, since the district's BVAP is "way beyond what is necessary for black[voters] to elect candidates of choice." *Id.* 189:11-13.

10. Proportionality

390. The Court finds that Black representation in HB 1 is not proportional to the Black share of the statewide population. Defendants do not dispute this fact.

391. Even though Black Louisianians make up 33.13% of the state's total population and 31.25% of the state's voting-age population, they constitute a majority of the total and voting-age populations in just 17% of the state's congressional districts. GX-1 Figures 1- 2, 10.

392. Under HB 1, only about 31% of Black Louisianians live in majority-Black congressional districts, while 91.5% of white Louisianians live in majority-white districts. May 9 Tr. 116:5-18, 117:23-118:8.

393. By contrast, under Mr. Cooper's illustrative maps, approximately 50% of Black Louisianians would live in majority-Black congressional districts, while approximately 75% of white voters would live in majority-white districts. May 9 Tr. 117:5-14, 117:23-118:8.

V. Irreparable Harm

394. The Court finds that, because the enacted congressional plan dilutes the voting strength of Plaintiffs, conducting the 2022 midterm elections under this plan would cause Plaintiffs irreparable harm.

395. This Court has no power to provide any form of relief to Plaintiffs with respect to the 2022 elections once those elections have passed.

396. There are no "do-overs" in elections. As such, the harm Plaintiffs identify in this case is, by definition, irreparable once an election is held under an unlawful congressional plan.

397. The testimony presented at the hearing underscores the extent to which an election held under an unlawful map would threaten voters' fundamental rights.

398. Power Coalition President Ashley Shelton testified that voter confidence would be diminished if the 2022 elections were conducted using unlawful district maps. According to Ms. Shelton, "being able to elect a candidate of choice drives voter interest and voter excitement." May 10 Tr. 254:13-14. If HB 1 stays in place for the 2022 elections, the Power Coalition and similarly situated groups would be forced to do "double work" to address "deflated and disconnected" groups that "do [not] feel like they have a voice in power." *Id.* at 254:3-11.

399. Louisiana NAACP President Michael McClanahan testified that proceeding under maps that lacked a second minority-opportunity district would be seen as discriminatory. As Mr. McClanahan explained, the current congressional maps "show us that we can eat together, but we cannot share power together. . . . They basically told me as a black person in the State of Louisiana that your sons and daughters can play football at LSU . . . but when it comes to making laws, when it comes to making policy, stay [in] your place on the porch." May 9 Tr. 32:19-33:8. Mr. McClanahan further explained that the Louisiana NAACP will "be forced to divert resources from its broader statewide voter registration and community empowerment initiatives to ensure that its constituents and members in the affected districts are able to engage in the political process on equal footing with those in other districts." PR-10 at 4.

VI. Balance of Harms and Public Interest

400. The Court finds that the irreparable harm that Plaintiffs would suffer absent an injunction far outweighs any inconvenience an injunction will cause Defendants, and that a preliminary injunction would serve the public interest by vindicating Black Louisianians' fundamental voting rights.

A. Implementation of New Congressional Map

401. The Court finds that a remedial congressional plan can be feasibly implemented in advance of the 2022 midterm elections without significant cost, confusion, or hardship.

402. The 2022 congressional primary election is scheduled for November 8, 2022, nearly six months from now. GX-24. The congressional runoff election is scheduled for December. PR-80. Early voting for the Congressional primary will take place from October 25, 2022, through November 1, 2022. *Id.* Early voting for the Congressional election will take place from November 26, 2022 through December 3, 2022. *Id.*

403. The Court finds that none of the proffered reasons why a new map cannot be feasibly implemented before the elections this year is persuasive.

404. Sherri Hadskey, the state's Commissioner of Elections, testified that the State would need to "back out the work that was done and then re-enter all of the new work required for the plan so that voters are informed and are given the correct districts that they need to have a ballot for." May 13 Tr. 36:24-37:3. She further stated that a new round of notices would have to go out to voters, and referenced a paper shortage. *Id.* 39:23-40:11.

405. The Court finds that a national paper shortage does not heavily weigh against granting a preliminary injunction. Ballots cannot be printed until the candidate qualifying process concludes on July 29, 2022, and the process for preparing absentee ballot envelopes does not begin until August 1, 2022. May 13 Tr. 48:16-19, 49:10-50:2. Further, the number of ballots and absentee

ballot envelopes needed for the state's November 8, 2022, primary election is not contingent on the shape of Louisiana's congressional districts. *Id.* at 48:20-24, 50:6-13.

406. The Court similarly finds that Louisiana's practice of mailing voter cards that inform voters of their congressional district does not heavily weigh against granting a preliminary injunction. Louisiana provides other methods for voters to confirm their congressional district, including through the Geaux Vote mobile app and the Secretary's website. May 13 Tr. 52:20-53:3, 53:22-24.

407. The Court also finds that the Secretary does not send mailings to all voters in Louisiana in response to the creation of new election districts. Mailings are only sent to voters whose election districts actually change. May 13 Tr. 42:16-20. The Court finds that once the congressional districts are re-drawn implementing this limited mailing would not impose a burden on the Secretary. Per the testimony of Ms. Hadskey, the Secretary was recently able to update their records and send out these mailings to all impacted voters in less than three weeks. May 13 Tr. 42:16-43:2.

408. Moreover, because the Secretary chose to mail out voter cards during the pendency of this litigation, May 13 Tr. 31:9-15, any resulting cost or burden resulting from the need to circulate new voter cards is of the Secretary's own making.

409. Ms. Hadskey ultimately agreed that she would seek to fulfill her responsibility to administer the election on schedule, and would rely on her 30 years of experience in election administration to do so. May 13 Tr. 56:20-57:2.

410. The Court finds that Louisiana is properly equipped for implementing election changes, even on timeframes much shorter than the one presented here. Mr. Block, Governor Edwards's executive counsel, explained that there have been several recent instances where the

State has changed election dates and pre-election dates, often close in time to an election, in order to respond to emergencies. May 11 Tr. 21:7-10, 22:6-21. For example, he testified that (1) the "May elections in the spring of [20]22 were moved twice . . . as a result of the raging COVID outbreak"; and (2) following Hurricane Ida, the "the Secretary of State and the governor worked together on moving the . . . October, November elections to November, December last year." *Id.* at 18:17-22:21. Ms. Hadskey likewise testified that her office has "had to move state elections due to emergencies, due to hurricanes, due to things like that." May 13 Tr. 56:24-57:7.

411. Mr. Block further testified that even when deadlines have been altered and other changes made, the State was still able to successfully administer elections. May 11 Tr. 22:22-23:15. The Secretary's office was able to inform voters of changes, Louisianians were able to cast ballots, and electoral chaos did not result. *Id.* at 23:16-24:3. Mr. Block agreed that Louisiana has an election system that is able to adjust when things change. *Id.* at 24:4-7. While there might be some challenges, the State has "a lot of experience" adjusting election details, dates, and deadlines. *Id.* at 22:22-23:11; *see also* May 13 Tr. 57:2-7.

412. The Court further finds that there is sufficient time for the Legislature (or, if necessary, this Court) to draw a congressional map that complies with Section 2 of the Voting Rights Act for use in the state's November 8, 2022, primary election.

413. Due to the temporal gap between the candidate qualifying period and the primary election, this Court can extend the filing deadline without creating any need to alter the primary election date. Indeed, as noted, the Legislative Intervenors so acknowledged in the prior State court proceedings. GX-32 at 8.

414. The Legislature is currently in session, and the date for final adjournment of that session is June 6, 2022, at 6:00 p.m. May 11 Tr. 24:8-13. It is feasible for the Legislature to draw

a remedial map while in session during the next few weeks. May 11 Tr. 24:14-23. And even if a new map were not adopted during this legislative session, either Governor Edwards or the Legislature itself could call an extraordinary session to undertake remedial redistricting. *Id.* at 25:20-26:2.

415. As a comparison, North Carolina law provides that when a court invalidates a redistricting plan, it can give the legislature as few as 14 days to craft a new plan. *See* N.C. Gen. Stat. § 120-2.4(a). Although not bound by that rule, federal courts have followed the practice. After invalidating a congressional plan on February 5, 2016, the U.S. District Court for the Middle District of North Carolina gave the legislature until February 19 to enact a new plan. *See Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (three-judge court). Similarly, after invalidating a congressional plan on January 9, 2018, the same court gave the legislature until January 24 to enact a new plan. *See Common Cause v. Rucho*, 279 F. Supp. 3d 587, 691 (M.D.N.C.) (three-judge court), *rev'd on other grounds*, 138 S. Ct. 823 (2018). And after state courts invalidated North Carolina's congressional and state legislative plans in 2019, the legislature drew a new congressional plan in less than three weeks and new state legislative plans (involving nearly 80 districts) in even less time. *See Harper v. Lewis*, No. 19-CVS-012667 (N.C. Super. Ct. Oct. 28, 2019); *Common Cause v. Lewis*, No. 18-CVS-014001, 2019 WL 4569584 (N.C. Super. Ct. Sept. 3, 2019).

416. As another example, after invalidating Ohio's legislative plans, the Ohio Supreme Court ordered that new plans be drawn in just ten days. *See League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, Nos. 2021-1193, 2021-1198, 2021-1210, 2022 WL 110261, at *28 (Ohio Jan. 12, 2022).

417. Other federal courts have ordered similarly abbreviated timelines. *See, e.g.*, *Larios v. Cox*, 300 F. Supp. 2d 1320, 1357 (N.D. Ga. 2004) (three-judge court) (ordering legislature to enact new legislative plans within two-and-a-half weeks).

418. A number of factors present in this case would allow for the expeditious adoption of a new, lawful congressional map, including the advanced notice of potential liability afforded by Governor Edwards's veto message, which specifically mentioned that HB 1 fails to comply with the Voting Rights Act, GX-17, GX-18; the introduction during the legislative process of alternative congressional maps that included two minority-opportunity districts, GX-12; and the half-dozen illustrative maps prepared by Mr. Fairfax and Mr. Cooper during these proceedings.

419. The Court further finds that it retains the power to move the candidate qualification period or even the primary election itself as necessary to afford relief. *See, e.g.*, *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 201 n.11 (1972) ("[T]he District Court has the power appropriately to extend [election-related] time limitations imposed by state law."); *United States v. New York*, No. 1:10-cv-1214 (GLS/RFT), 2012 WL 254263, at *2 (N.D.N.Y. Jan. 27, 2012) (moving primary date to ensure UOCAVA compliance); *Quilter v. Voinovich*, 794 F. Supp. 760, 762 (N.D. Ohio 1992) (three-judge court) (noting that court ordered rescheduling of primary election to permit drawing of remedial legislative plans); *Busbee v. Smith*, 549 F. Supp. 494, 519 (D.D.C. 1982) (adopting special election calendar).

420. Thus, if necessary, it would be feasible to move election deadlines here. As the Legislative Intervenors stated less than two months ago before a state court: "[T]he candidate qualification period could be moved back, if necessary, as other states have done this cycle, without impacting voters." GX-32 at 8.

421. Indeed, just this cycle, Kentucky moved its candidate filing date by 18 days because of redistricting delays; this action did not impact the commonwealth's normally scheduled primary date. *See* Ky. H.B. 172 (2022).

422. Finally, the Court observes that counsel for Defendants previously represented to Judge Donald R. Johnson of the Nineteenth Judicial District Court that a new congressional map could be feasibly adopted and implemented in the coming weeks and months. The Secretary argued that the Legislature could override Governor Edwards's veto of another plan passed during its regular session "in a veto session[] before [the] fall elections." GX-26 at 3; *see also* GX-28 at 3 (similar); GX-27 at 4 (Legislative Intervenors representing that "[e]ven if the Governor vetoes a congressional redistricting bill from the 2022 Regular Session, the Legislature has an opportunity to override the veto in a veto session, or to call into session another Extraordinary Session, before the fall elections."). Counsel for the Secretary made similar representations during oral argument before Judge Johnson, indicating that "[e]ven if the Governor ends up vetoing a bill" passed in the Legislature's regular session, the Legislature could still "override" or "call themselves into another session," thus pushing enactment of a new congressional map well into the summer. GX-33 at 35:26-31; *see also id.* at 14:3-8 (noting that Legislature "ha[s] the ability to go into a[n] override session" to pass new congressional map); *id.* at 30:21-32 (claiming that judicial redistricting deadline of June 17 would allow court to "substitute [its] judgment . . . with regard to . . . a clearly legislative function"); *id.* at 32:3-20 (observing that Louisiana does not have "a hard deadline for redistricting" and that "the Legislature . . . can also amend the election code if necessary to deal with congressional reapportionment"); *id.* at 37:5-22 (similar).

423. Because the Legislature's regular session is scheduled to end on June 6, 2022, GX-25; May 11 Tr. 24:8-13, Defendants' prior representations in state court indicate that a new map could be passed and implemented after June 6.

424. Moreover, the Legislative Intervenors previously represented that

> the candidate qualification period could be moved back, if necessary, as other states have done this cycle, without impacting voters. . . .
> The 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). . . .
>
> Therefore, there remains several months on Louisiana's election calendar to complete the [redistricting] process.

GX-32 at 8.

425. Given the timing of the primary election and preceding deadlines, the limited impact a new map would have at this point in the election calendar, the responsiveness of Louisiana's elections system, and the representations made by Defendants in prior litigation, the Court finds that the State can "easily . . . make the change" to Louisiana's congressional map "without undue collateral effects." *Merrill v. Milligan*, 142 S. Ct. 879, 881 n.1 (2022) (Kavanaugh, J., concurring).

B. Harm to Voters and Candidates and Public Interest

426. The Court finds that a preliminary injunction would serve the public interest by vindicating Black Louisianians' fundamental voting rights. *See, e.g.*, May 10 Tr. 258:6-8 (Ms. Shelton: "[P]acking us all into one district . . . minimize[s] the ability of [B]lack voters to elect candidates of choice."); PR-1 at 3 (Dr. Robinson: "The enacted map deprives me of the opportunity to elect a candidate who represents by needs and the needs of my community"); PR-4 at 3 (Mr. Soulé: "I do not believe that my vote counts and is given equal weight as the vote of white

Louisianians."); PR-5 at 3 (Ms. Washington: "I believe that the enacted map does not give equal weight to all votes because it dilutes Black voting strength[.]").

427. The Court further finds that the risk of hardship or confusion for Louisiana voters and candidates would be low if a new, lawful congressional map were implemented in advance of the 2022 midterm elections.

428. Voters do not yet have certainty about who will appear on the ballot, and will not have certainty until after the July 20-22 qualifying period. PR-80.

429. As the Legislative Intervenors stated in the state court litigation that preceded this action: "*The 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)." GX-32 at 8 (emphasis added).

430. In any event, organizations like the Louisiana NAACP and Power Coalition have procedures and networks in place to keep voters informed about elections. May 9 Tr. 57:14-58:7 (discussing Louisiana NAACP's "souls to the polls" program"); May 10 Tr. 244:19-22 (discussing PCEJ's network of "about 500,000 people").

431. In addition, the Secretary's office has several procedures in place for keeping voters informed, including an outreach program, a mobile application that provides voters with information about upcoming elections, and a website that provides similar information. May 13 Tr. 43:10-44:11, 45:11-46:4, 52:20-53:3, 53:22-24.

432. Moreover, absentee ballots to overseas service members and residents are not due to be mailed until September 24, 2022, and early voting for certain state residents is not scheduled to begin until October 18, 2022. SOS_1 at 4.

433. As for congressional candidates, the earliest deadline related to congressional elections identified by Defendants is June 22, 2022, when candidates filing by nominating petition must submit their petitions. *Id.* But it is extremely rare for Louisiana congressional candidates to file by nominating petition. May 13 Tr. 58:8-59:2. Instead, congressional candidates regularly file by paying a $600 qualifying fee, which is not due until July 22, 2022. *Id.* at 58:2-4. Thus, the adoption of a remedial congressional map will not impose any significant harm even if the period for gathering petition signatures is reduced.

434. The public interest will be served by an order prohibiting the Secretary from enforcing, implementing, or conducting elections using a congressional map that violates Section 2. By contrast, the Court finds that any harm caused to Defendants and the State will be minimal.

PROPOSED CONCLUSIONS OF LAW

1. Plaintiffs have satisfied each of the four elements of a preliminary injunction by showing that: (1) they are substantially likely to succeed on the merits; (2) there is a substantial threat that Plaintiffs and other Black Louisianians will face irreparable harm in the absence of an injunction; (3) the irreparable harm to Plaintiffs far outweighs any harm an injunction would cause to Defendants; and (4) a preliminary injunction will serve the public interest. *See Speaks v. Kruse*, 445 F.3d 396, 399-400 (5th Cir. 2006).

I. Plaintiffs are substantially likely to succeed on the merits of their Section 2 claims.

2. Plaintiffs have satisfied all elements of their textbook Section 2 claims.

3. Section 2 of the Voting Rights Act renders unlawful any state "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).

4. A single-member congressional district plan that dilutes the voting strength of a minority community may violate Section 2. *See LULAC v. Perry*, 548 U.S. 399, 423-42 (2006) (plurality opinion).

5. "Dilution of racial minority group voting strength" in violation of Section 2 "may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority." *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

6. Dilution of a minority community's voting strength violates Section 2 if, under the totality of the circumstances, the "political processes leading to nomination or election in the State. . . are not equally open to participation by members of [a racial minority group] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b).

7. "The essence of a Section 2 claim . . . is that certain electoral characteristics interact with social and historical conditions to create an inequality in the minority and majority voters' ability to elect their preferred representatives." *City of Carrollton Branch of NAACP v. Stallings*, 829 F.2d 1547, 1554-55 (11th Cir. 1987).

8. "[P]roof that a contested electoral practice or mechanism was adopted or maintained with the intent to discriminate against minority voters[] is not required under Section 2 of the Voting Rights Act." *Carrollton Branch*, 829 F.2d at 1553.

9. Rather, the question posed by a Section 2 claim is "whether as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice." *Gingles*, 478 U.S. at 44 (cleaned up); *see also, e.g.*, *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 775 F.3d 1336, 1342

(11th Cir. 2015) ("A discriminatory *result* is all that is required; discriminatory intent is not necessary."); *LULAC v. Abbott*, Nos. 3:21-CV-259-DCG-JES-JVB, 1:21-CV-991-LY-JES-JVB, 2022 WL 1410729, at *8 (W.D. Tex. May 4, 2022) (three-judge court) ("The Supreme Court interpreted that new language in *Thornburg v. Gingles*, to mean that Section 2, unlike the Constitution, could be violated even if a state did not act with a racial motive. The Court also took a broad view of discriminatory effect, such that Section 2 generally requires the creation of legislative districts where a racial minority is (1) large and geographically compact, (2) politically cohesive, and (3) otherwise unable to overcome bloc voting by the racial majority." (citation omitted)).

10. While "federal courts are bound to respect the States' apportionment choices," they must intervene when "those choices contravene federal requirements," such as Section 2's prohibition of vote dilution. *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993).

11. A Section 2 plaintiff challenging a districting plan as dilutive must satisfy three criteria, first set forth by the Supreme Court in *Gingles*.

12. The three *Gingles* preconditions are: (1) the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) the minority group must be "politically cohesive"; and (3) the white majority must "vote[] sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." 478 U.S. at 50-51.

13. "The 'geographically compact majority' and 'minority political cohesion' showings are needed to establish that the minority has the potential to elect a representative of its own choice in some single-member district. And the 'minority political cohesion' and 'majority bloc voting' showings are needed to establish that the challenged districting thwarts a distinctive

minority vote by submerging it in a larger white voting population." *Growe v. Emison*, 507 U.S. 25, 40 (1993).

A. Plaintiffs have satisfied the first *Gingles* precondition because a second compact, majority-Black congressional district can be drawn in Louisiana.

14. 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." *LULAC*, 548 U.S. at 425 (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1006-07 (1994)).

15. Although "[p]laintiffs typically attempt to satisfy [the first *Gingles* precondition] by drawing hypothetical majority-minority districts," *Clark v. Calhoun County* (*Clark II*), 88 F.3d 1393, 1406 (5th Cir. 1996), such illustrative plans are "not cast in stone" and are offered only "to demonstrate that a majority-[B]lack district is feasible," *Clark v. Calhoun County* (*Clark I*), 21 F.3d 92, 95 (5th Cir. 1994); *see also Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1019 (8th Cir. 2006) (same).

16. "When applied to a claim that single-member districts dilute minority votes, the first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *De Grandy*, 512 U.S. at 1008.

17. The Court concludes that Plaintiffs have shown that Louisiana's Black population is sufficiently numerous and geographically compact to support the creation of an additional majority-Black congressional district.

11. Louisiana's Black population is sufficiently numerous to form an additional majority-Black congressional district.

18. Plaintiffs have shown that Louisiana's Black population is sufficiently large to constitute a majority in a second congressional district.

19. Under the first *Gingles* precondition, the Court must answer an objective, numerical question: "Do minorities make up more than 50 percent of the voting-age population in the relevant geographic area?" *Bartlett v. Strickland*, 556 U.S. 1, 18 (2009) (plurality opinion).

20. The burden of proof is "a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." *Bartlett*, 556 U.S. at 19-20.

21. When a voting rights "case involves an examination of only one minority group's effective exercise of the electoral franchise[,] . . . it is proper to look at all individuals who identify themselves as black" when determining a district's BVAP. *Georgia v. Ashcroft*, 539 U.S. 461, 474 n.1 (2003); *see also, e.g.*, *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338, 1343 n.8 (N.D. Ga. 2015) ("[T]he Court is not willing to 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 in Fayette County."). Indeed, "[t]he irony would be great if being considered only 'part Black' subjected a person to an extensive pattern of historical discrimination but now prevented one from stating a claim under a statute designed in substantial part to remedy that discrimination." *Singleton v. Merrill*, Nos. 2:21-cv-1291-AMM, 2:21-cv-1530-AMM, 2022 WL 265001, at *56 (N.D. Ala. Jan. 24, 2022) (per curiam) (three-judge court).

22. Accordingly, the AP BVAP metric is appropriate when establishing the first *Gingles* precondition in a Section 2 case. *See, e.g.*, *Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 419-20 (M.D. La. 2017), *rev'd on other grounds sub nom. Fusilier v. Landry*, 963 F.3d 447 (5th Cir. 2020); *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, Nos. 1:21-CV-5337-SCJ, 1:21-CV-5339-SCJ, 1:22-CV-122-SCJ, 2022 WL 633312, at *16 (N.D. Ga. Feb. 28, 2022); *Singleton*, 2022 WL 265001, at *12 n.5; *Ga. State Conf. of NAACP*, 118 F. Supp. 3d at 1343; *Covington v. North Carolina*, 316 F.R.D. 117, 125 n.2 (M.D.N.C. 2016) (three-judge court),

aff'd, 137 S. Ct. 2211 (2017); *Mo. State Conf. of NAACP v. Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d 1006, 1033 (E.D. Mo. 2016).

23. Mr. Fairfax and Mr. Cooper drew illustrative plans that contain a second majority-Black congressional district. These additional districts were drawn while balancing traditional redistricting criteria.

24. For these reasons, the Court concludes that Plaintiffs have shown that Louisiana's Black population is large enough to constitute a majority in a second congressional district.

12. Louisiana's Black population is sufficiently compact to form a second majority-Black congressional district.

25. Plaintiffs have shown that Louisiana's Black population can form a second majority-Black congressional district that is reasonably compact.

26. Under the compactness requirement of the first *Gingles* precondition, Plaintiffs must show that it is "possible to design an electoral district[] consistent with traditional districting principles." *Davis v. Chiles*, 139 F.3d 1414, 1425 (11th Cir. 1998).

27. It is important to emphasize that compliance with this criterion does not require that the illustrative plans be equally or more compact than the enacted plan; instead, this criterion requires only that the illustrative plans contain reasonably compact districts. An illustrative plan can be "far from perfect" in terms of compactness yet satisfy the first *Gingles* precondition. *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1326 (M.D. Ga. 2018), *aff'd*, 979 F.3d 1282 (11th Cir. 2020).

28. "The first *Gingles* precondition does not require some aesthetic ideal of compactness, but simply that the black population be sufficiently compact to constitute a majority in a single-member district." *Houston v. Lafayette County*, 56 F.3d 606, 611 (5th Cir. 1995) (quoting *Clark I*, 21 F.3d at 95).

29. "While no precise rule has emerged governing § 2 compactness," *LULAC*, 548 U.S. at 433, plaintiffs satisfy the first *Gingles* precondition when their proposed majority-minority district is "consistent with traditional districting principles." *Davis*, 139 F.3d at 1425.

30. These traditional districting principles include "maintaining communities of interest and traditional boundaries," "geographical compactness, contiguity, and protection of incumbents. Thus, while Plaintiffs' evidence regarding the geographical compactness of their proposed district does not alone establish compactness under § 2, that evidence, combined with their evidence that the district complies with other traditional redistricting principles, is directly relevant to determining whether the district is compact under § 2." *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 950 F. Supp. 2d 1294, 1307 (N.D. Ga. 2013) (citations omitted), *aff'd in part, rev'd in part on other grounds*, 775 F.3d 1336 (11th Cir. 2015).

31. "[T]here is more than one way to draw a district so that it can reasonably be described as meaningfully adhering to traditional principles, even if not to the same extent or degree as some other hypothetical district." *Chen v. City of Houston*, 206 F.3d 502, 519 (5th Cir. 2000).

32. The remedial plan that the Court eventually implements if it finds Section 2 liability need not be one of the maps proposed by Plaintiffs. *See Clark I*, 21 F.3d at 95-96 & n.2 ("[P]laintiffs' proposed district is not cast in stone. It [is] simply presented to demonstrate that a majority-black district is feasible in [the jurisdiction]. . . . The district court, of course, retains supervision over the final configuration of the districting plan.").

33. The Court concludes that Mr. Fairfax's and Mr. Cooper's illustrative congressional maps satisfy the criteria of population equality and contiguity. There is no factual dispute on these issues.

34. The Court concludes that Mr. Fairfax's and Mr. Cooper's illustrative congressional maps satisfy the criterion of compactness. Indeed, their illustrative plans have compactness scores comparable to—and, in some cases, better than—the enacted congressional plan.

35. The Court concludes that Mr. Fairfax's and Mr. Cooper's illustrative congressional maps preserve political subdivision boundaries. Neither Defendants nor their experts have meaningfully suggested that Mr. Cooper's illustrative maps fail to comply with this principle.

36. The Court concludes that Mr. Fairfax's and Mr. Cooper's illustrative congressional maps preserve communities of interest. Unlike the enacted congressional map—which contains a Congressional District 2 that packs Black voters into a single district without regard to communities of interest and cracks the state's remaining Black population among predominantly white districts—the illustrative Congressional District 5 in Plaintiffs' illustrative maps unite communities that share historic, familial, cultural, economic, and educational ties.

37. Finally, the Court concludes that race did not predominate in the drawing of the illustrative congressional maps. Mr. Fairfax and Mr. Cooper testified that no single criterion predominated when they drew their illustrative maps, and the maps' compliance with neutral redistricting criteria confirm this. Defendants failed to establish that race predominated in the drawing of any of the illustrative districts.

38. Moreover, that "some awareness of race likely is required to draw two majority-Black districts" "is unremarkable, not stunning." *Singleton v. Merrill*, Nos. 2:21-cv-1291-AMM, 2:21-cv-1530-AMM, 2022 WL 272636, at *5 (N.D. Ala. Jan. 27, 2022) (three-judge court) (cleaned up). "[T]he first Gingles factor is an inquiry into causation that *necessarily classifies voters by their race*." *Clark II*, 88 F.3d at 1407 (emphasis added). Because courts "*require* plaintiffs to show that it is possible to draw majority-minority voting districts," "[t]o penalize

[Plaintiffs] . . . for attempting to make the very showing that *Gingles*[and its progeny] demand would be to make it impossible, as a matter of law, for any plaintiff to bring a successful Section Two action." *Davis*, 139 F.3d at 1425-26; *accord Singleton*, 2022 WL 272636, at *7 ("[A] rule that rejects as unconstitutionally race-focused a remedial plan for attempting to satisfy the *Gingles* I numerosity requirement would preclude any plaintiff from ever stating a Section Two claim."). Consideration is not the same as predominance, and none of Defendants' arguments or expert analyses provide any compelling evidence that race predominated in Mr. Fairfax's or Mr. Cooper's illustrative districts.

39. At any rate, Defendants' focus on racial predominance constitutes a misapplication of the racial gerrymandering doctrine, an independent area of law wholly distinct from the claims that Plaintiffs raise here. The Fifth Circuit has previously rejected attempts to conflate these doctrines—for example, by applying *Miller v. Johnson*, 515 U.S. 900 (1995), in the *Gingles* context—concluding that "we do not understand *Miller* and its progeny to work a change in the first *Gingles* inquiry into whether a sufficiently large and compact district can be drawn in which the powerful minority would constitute a majority." *Clark II*, 88 F.3d at 1407.

40. Even if racial predominance were a relevant consideration in a Section 2 case (it is not), and even if race did predominate in Plaintiffs' illustrative plan (it did not), Plaintiffs are still likely to succeed on the merits of their claim because their illustrative plan is motivated by an effort to comply with the Voting Rights Act and is sufficiently tailored to achieve that end. *See Miller*, 515 U.S. at 916 (explaining in racial gerrymandering cases that it is "plaintiff's burden . . . to show . . . that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district[s]," after which state must

"satisfy strict scrutiny" by demonstrating that plan "is narrowly tailored to achieve a compelling state interest").

41. The U.S. Supreme Court has "assume[d], without deciding, that . . . complying with the Voting Rights Act was compelling." *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 801 (2017). Indeed, the redistricting guidelines adopted by the Legislature confirm that compliance with the Voting Rights Act is a compelling state interest. *See* GX-20.

42. In this context, narrow tailoring does not "require an exact connection between the means and ends of redistricting," but rather just "'*good reasons*' to draft a district in which race predominated over traditional districting criteria." *Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1064 (M.D. Ala. 2017) (three-judge court) (quoting *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015)).

43. In other words, even if racial predominance were relevant here, Plaintiffs' compliance with Section 2 of the Voting Rights Act constitutes "good reason" to create a race-based district, and the remedy would be narrowly tailored even if it were not the only manner in which to draw the additional majority-Black congressional district. Accordingly, even if strict scrutiny applied here (which it does not), Plaintiffs' illustrative plan satisfies it.

44. In light of this precedent, Defendants' insistence that faithful application of U.S. Supreme Court caselaw produces an "unconstitutional" result would require the Court to find that Section 2 of the Voting Rights Act is itself unconstitutional. But this Court may not ignore controlling precedent. The Fifth Circuit has squarely held that Section 2's is a proper exercise of Congress's enforcement authority under the Fourteenth and Fifteenth Amendments. *See Jones v. City of Lubbock*, 727 F.2d 364, 373-35 (5th Cir. 1984). Sitting en banc just a few years ago, the

court reaffirmed this conclusion. *See Veasey v. Abbott*, 830 F.3d 216, 253 & n.47 (5th Cir. 2016) (en banc) (*Jones*'s holding that Section 2 is constitutional "still binds us").

45. Applying controlling Section 2 caselaw, the Court concludes that Plaintiffs have demonstrated that the Black population in Louisiana is sufficiently large and geographically compact to support a second majority-Black congressional district.

B. Plaintiffs have satisfied the second *Gingles* precondition because Black Louisianians are politically cohesive.

46. The second *Gingles* precondition requires that "the minority group [] be able to show that it is politically cohesive." 478 U.S. at 51.

47. "A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, and, consequently, establishes minority bloc voting within the context of § 2." *Gingles*, 478 U.S. at 56 (cleaned up).

48. Courts rely on statistical analyses to estimate the proportion of each racial group that voted for each candidate. *See, e.g.*, *Gingles*, 478 U.S. at 52-54; *Nipper v. Smith*, 39 F.3d 1494, 1505 n.20 (11th Cir. 1994); *Citizens for Better Gretna v. City of Gretna*, 834 F.2d 496, 500-03 (5th Cir. 1987); *see also League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 986 F.2d 728, 743 (5th Cir.), *on reh'g*, 999 F.2d 831 (5th Cir. 1993).

49. Courts have recognized ecological inference ("EI") as an appropriate analysis for determining whether a plaintiff has satisfied the second and third *Gingles* preconditions. *See, e.g.*, *Alpha Phi Alpha Fraternity*, 2022 WL 633312, at *56-64; *Caster v. Merrill*, No. 2:21-cv-1536-AMM, 2022 WL 264819, at *27, *38, *68-70 (N.D. Ala. Jan. 24, 2022); *Rose v. Raffensperger*, No. 1:20-CV-02921-SDG, 2022 WL 205674, at *11 (N.D. Ga. Jan. 24, 2022); *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 691 (S.D. Tex. 2017); *Benavidez v. City of Irving*, 638 F. Supp.

2d 709, 723-24 (N.D. Tex. 2009); *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 1003 (D.S.D. 2004), *aff'd*, 461 F.3d 1011 (8th Cir. 2006).

50. In fact, Dr. Alford recently agreed that EI is the "gold standard for experts in this field doing a racially-polarized voting analysis." *Alpha Phi Alpha*, 2022 WL 633312, at *61.

51. The second *Gingles* precondition is satisfied here because Black voters in Louisiana are politically cohesive. *See* 478 U.S. at 49. "Bloc voting by blacks tends to prove that the black community is politically cohesive, that is, it shows that blacks prefer certain candidates whom they could elect in a single-member, black majority district." *Id.* at 68. The analyses conducted by Dr. Handley and Dr. Palmer clearly demonstrate high levels of cohesiveness among Black Louisianians in supporting their preferred candidates throughout the state, including in the area where Mr. Fairfax and Mr. Cooper have proposed to draw an additional majority-Black congressional district. Neither Dr. Alford nor any of Defendants' other expert witnesses seriously contest this conclusion, and Dr. Alford confirmed Dr. Handley's and Mr. Fairfax's methodology and calculations.

C. Plaintiffs have satisfied the third *Gingles* precondition because white Louisianians engage in bloc voting to defeat Black-preferred candidates.

52. The third *Gingles* precondition requires that "the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." 478 U.S. at 51.

53. As to the third *Gingles* precondition, "a white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting." 478 U.S. at 56.

54. No specific threshold percentage is required to demonstrate bloc voting, as "[t]he amount of white bloc voting that can generally 'minimize or cancel' black voters' ability to elect representatives of their choice . . . will vary from district to district." *Gingles*, 478 U.S. at 56.

55. The Court concludes that Dr. Handley's and Dr. Palmer's analyses demonstrate high levels of white bloc voting throughout the state, including in the area where Mr. Fairfax and Mr. Cooper have proposed to draw an additional majority-Black congressional district. The Court also finds that candidates preferred by Black voters are almost always defeated by white bloc voting except in those areas where they form a majority.

56. The Court additionally concludes that Plaintiffs presented evidence establishing that their illustrative maps do not rely on crossover districts. The evidence from Plaintiffs' experts is undisputed that voting throughout Louisiana is highly polarized and, as such, that white voters engage in bloc voting to defeat Black-preferred candidates. The Black-opportunity districts in Plaintiffs' illustrative maps are required by Section 2 because of this stark polarization.

57. The Court concludes that Defendants did not present any relevant or credible evidence to refute the findings of Dr. Handley and Dr. Palmer as to the third *Gingles* precondition. Dr. Alford agreed with the conclusion that white voters generally engage in bloc voting to defeat Black-preferred candidates, and further confirmed Dr. Handley's and Dr. Palmer's methodology and calculations. The Court did not find the analysis of Dr. Lewis credible, and Dr. Solanky's findings as to bloc voting in East Baton Rouge Parish are irrelevant because the Court's "redistricting analysis must take place at the district level," and cannot look at "only one, small part of the district" like a single parish. *Abbott v. Perez*, 138 S. Ct. 2305, 2331-32 (2018).

58. The Court further concludes that Dr. Handley and Dr. Palmer established that Black voters would have an opportunity to elect their candidates of choice in each of Plaintiffs' illustrative iterations of Congressional District 5.

D. The totality of circumstances demonstrates that HB 1 denies Black Louisianians an equal opportunity to elect their preferred candidates to Congress.

59. The Court concludes that the totality of circumstances confirms what Plaintiffs' satisfaction of the *Gingles* preconditions indicates: HB 1 dilutes the voting strength of Black Louisianians and denies them an equal opportunity to elect their congressional candidates of choice.

60. Because each of the relevant considerations discussed below weighs in favor of a finding of vote dilution, Plaintiffs have demonstrated that the enacted congressional plan violates Section 2 of the Voting Rights Act.

61. Once plaintiffs satisfy the three *Gingles* preconditions, courts consider whether "under the 'totality of the circumstances,' plaintiffs do not possess the same opportunities to participate in the political process and elect representatives of their choice enjoyed by other voters." *Patino*, 230 F. Supp. 3d at 713 (quoting *Perez v. Pasadena Ind. Sch. Dist.*, 958 F. Supp. 1196, 1201 (S.D. Tex. 1997)).

62. "[I]t will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* [preconditions] but still have failed to establish a violation of § 2 under the totality of circumstances." *Clark I*, 21 F.3d at 97 (quoting *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993)); *see also Ga. State Conf. of NAACP*, 775 F.3d at 1342 (same).

63. In cases where plaintiffs have satisfied the *Gingles* preconditions but a court determines the totality of the circumstances does *not* show vote dilution, "the district court must

explain with particularity why it has concluded, under the particular facts of that case, than an electoral system that routinely results in white voters voting as a bloc to defeat the candidate of choice of a politically cohesive minority group is not violative of § 2 of the Voting Rights Act." *Jenkins*, 4 F.3d at 1135.

64. The determination of whether vote dilution exists under the totality of circumstances requires "a searching practical evaluation of the past and present reality," which is an analysis "peculiarly dependent upon the facts of each case and requires an intensely local appraisal of the design and impact of the contested" district map. *Gingles*, 478 U.S. at 79 (cleaned up).

65. To determine whether vote dilution is occurring, "a court must assess the impact of the contested structure or practice on minority electoral opportunities on the basis of objective factors. The Senate Report [from the 1982 amendments to the Voting Rights Act] specifies factors which typically may be relevant to a § 2 claim." *Gingles*, 478 U.S. at 44 (cleaned up).

66. These "Senate Factors" include: (1) "the history of voting-related discrimination in the State or political subdivision"; (2) "the extent to which voting in the elections of the State or political subdivision is racially polarized"; (3) "the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting"; (4) "the exclusion of members of the minority group from candidate slating processes"; (5) "the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process"; (6) "the use of

overt or subtle racial appeals in political campaigns"; and (7) "the extent to which members of the minority group have been elected to public office in the jurisdiction." *Gingles*, 478 U.S. at 44-45.

67. "The [Senate] Report notes also that evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group and that the policy underlying the State's . . . use of the contested practice or structure is tenuous may have probative value." *Gingles*, 478 U.S. at 45.

68. The Senate Report's "list of typical factors is neither comprehensive nor exclusive." *Gingles*, 478 U.S. at 45. Ultimately, Section 2 requires "a flexible, fact-intensive inquiry predicated on 'an intensely local appraisal of the design and impact of the contested electoral mechanisms,'" "a searching practical evaluation of the 'past and present reality,'" and a "'functional' view of political life." *NAACP v. Fordice*, 252 F.3d 361, 367 (5th Cir. 2001) (first quoting *Magnolia Bar Ass'n v. Lee*, 994 F.2d 1143, 1147 (5th Cir. 1993); and then quoting *LULAC, Council No. 4434 v. Clements*, 999 F.2d 831, 860 (5th Cir. 1993) (en banc))).

69. The Senate Factors are not exclusive, and "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *Gingles*, 478 U.S. at 45 (quoting S. Rep. No. 97-417, pt. 1, at 29 (1982)); *see also Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1120 (5th Cir. 1991).

13. Senate Factor One: Louisiana has an ongoing history of official, voting-related discrimination.

70. Louisiana's history of voting-related discrimination is so deeply ingrained that "it would take a multi-volumed treatise to properly describe the persistent, and often violent, intimidation visited by white citizens upon black efforts to participate in Louisiana's political process." *Citizens for Better Gretna v. City of Gretna*, 636 F. Supp. 1113, 1116 (E.D. La. 1986), *aff'd*, 834 F.2d 496 (5th Cir. 1987); *see also United States v. Louisiana*, 225 F. Supp. 353, 363

(E.D. La. 1963) (three-judge court) (extensively cataloging Louisiana's "historic policy and the dominant white citizens' firm determination to maintain white supremacy in state and local government by denying to [Black citizens] the right to vote"), *aff'd*, 380 U.S. 145 (1965).

71. The history described above and recounted by Dr. Lichtman and Dr. Gilpin demonstrates that voting-related discrimination is not a vestige of the past and persists to this day. The first Senate Factor thus weighs heavily in Plaintiffs' favor.

14. Senate Factor Two: Louisiana voters are racially polarized.

72. "Evidence of racially polarized voting is at the root of a racial vote dilution claim because it demonstrates that racial considerations predominate in elections and cause the defeat of minority candidates or candidates identified with minority interests." *Citizens for a Better Gretna*, 636 F. Supp. at 1133 (quoting *Johnson v. Halifax County*, 594 F. Supp. 161, 170 (E.D.N.C. 1984)).

73. Courts have found that voting in Louisiana is racially polarized. *See, e.g.*, *Terrebonne Par. Branch NAACP*, 274 F. Supp. 3d at 436-37 (recognizing racially polarized voting in Terrebonne Parish); *St. Bernard Citizens for Better Gov't v. St. Bernard Par. Sch. Bd.*, No. CIV.A. 02-2209, 2002 WL 2022589, at *9 (E.D. La. Aug. 26, 2002) (recognizing racially polarized voting in St. Bernard Parish); *Clark v. Edwards*, 725 F. Supp. 285, 298-99 (M.D. La. 1988) (concluding that "across Louisiana and in each of the family court and district court judicial districts as well as in each of the court of appeal districts, there is consistent racial polarization in voting"), *vacated on other grounds*, 750 F. Supp. 200 (M.D. La. 1990); *Citizens for Better Gretna*, 636 F. Supp. at 1124-31 (recognizing racially polarized voting in City of Gretna); *Major v. Treen*, 574 F. Supp. 325, 337-39 (E.D. La. 1983) (three-judge court) (recognizing racial polarization in Orleans Parish).

74. Black and white Louisianians consistently support opposing candidates. Dr. Handley and Dr. Palmer provided clear evidence that this is the case, which Defendants' expert witnesses did not meaningfully contest.

75. Defendants are wrong to suggest that Plaintiffs must affirmatively prove the subjective motivations of voters as part of this inquiry. "It 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. Consequently, . . . under the 'results test' of § 2, only the correlation between race of voter and selection of certain candidates, not the causes of the correlation, matters." *Gingles*, 478 U.S. at 63.

76. The Fifth Circuit has concluded that a district court "err[ed] by placing the burden on plaintiffs to disprove that factors other than race affect voting patterns" as part of the *Gingles* analysis. *Teague v. Attala County*, 92 F.3d 283, 290 (5th Cir. 1996). This is consistent with the position of the *Gingles* plurality, which held that racially polarized voting "refers only to the existence of a correlation between the race of voters and the selection of certain candidates." 478 U.S. at 74.

77. A showing that party and not race is the source of polarization "is for the defendants to make." *Teague*, 92 F.3d at 290. Here, all Dr. Alford demonstrated is the mere existence of a partisan divide, which reveals nothing about why Black and white voters support candidates from different parties—and is therefore not enough to shift the burden to Plaintiffs.

78. Putting caselaw aside, requiring courts to inquire into the reasons why Louisianians vote in a racially polarized manner would directly contradict Congress's explicit purpose in turning Section 2 into an entirely effects-based prohibition. That purpose was to avoid "unnecessarily divisive [litigation] involv[ing] charges of racism on the part of individual officials or entire

communities." S. Rep. No. 97-417, at 36. It would also erect an evidentiary burden that "would be all but impossible" for Section 2 plaintiffs to satisfy. *Gingles*, 478 U.S. at 73 (describing "inordinately difficult burden" this theory would place on plaintiffs (cleaned up)). "To accept this theory would frustrate the goals Congress sought to achieve by repudiating the intent test of *Mobile v. Bolden*, 446 U.S. 55 (1980), and would prevent minority voters who have clearly been denied an opportunity to elect representatives of their choice from establishing a critical element of a vote dilution claim." *Id.* at 71.

79. At any rate, in support of their assertion that political ideology and not race explains Louisiana's polarized voting, Defendants and their expert offer the simple fact that Black voters prefer Democrats and white voters prefer Republicans. But as Plaintiffs have shown, that fact tells us nothing about whether race and issues inextricably linked to race impact the partisan preferences of Black and white voters. Indeed, Plaintiffs offered substantial evidence that issues of race and racial justice *do* play a critical role in shaping those preferences today.

80. In sum, the Court concludes both that voting in Louisiana is polarized on racial lines and that race is the functional cause of this polarization.

81. The second Senate Factor thus weighs heavily in Plaintiffs' favor.

15. Senate Factor Three: Louisiana's voting practices enhance the opportunity for discrimination.

82. This Senate Factor examines "the extent to which the State . . . has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting." *Gingles*, 478 U.S. at 44-45.

83. As discussed above and throughout Dr. Lichtman's expert report, Louisiana's history is marked by electoral schemes that have enhanced the opportunity for discrimination

against Black voters—some of which, including and especially the majority-vote requirement, *see City of Port Arthur v. United States*, 459 U.S. 159, 167 (1982), persist to this day.

84. This factor thus weighs in Plaintiffs' favor.

16. Senate Factor Four: Louisiana has no history of candidate slating for congressional elections.

85. Although Louisiana uses no slating process for its congressional elections, Dr. Lichtman explained that the packing of some Black voters into the enacted Congressional District 2 and the cracking of the remaining Black voters among the state's five other congressional districts renders candidate slating unnecessary. As a result, this factor weighs in Plaintiffs' favor or is simply irrelevant to this case.

17. Senate Factor Five: Louisiana's discrimination has produced severe socioeconomic disparities that impair Black Louisianians' participation in the political process.

86. This factor examines "the extent to which minority group members bear the effects of past discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process." *Gingles*, 478 U.S. at 45. "To establish this factor, a plaintiff must prove two elements—(1) socioeconomic disparities in areas such as education, income level, and living conditions which arise from past discrimination, and (2) 'proof that participation in the political process is in fact depressed among minority citizens,' which can be shown by evidence of reduced levels of registration or lower turnout among minority voters." *Terrebonne Par. Branch NAACP*, 274 F. Supp. 3d at 442 (quoting *LULAC*, 999 F.2d at 867). "Where the minority group presents evidence that its members are socioeconomically disadvantaged and that their level of participation in politics is depressed, the group need not prove any further causal nexus between its members' disparate socioeconomic status and the depressed level of political participation." *LULAC*, 986 F.2d at 750 (cleaned up).

87. "[D]epressed levels of income, education and employment are a consequence of severe historical disadvantage. Depressed levels of participation in voting and candidacy are inextricably involved in the perception of futility and impotence such a history engenders." *Citizens for Better Gretna*, 636 F. Supp. at 1120; *see also St. Bernard Citizens for Better Gov't*, 2002 WL 2022589, at *9 ("Both Congress and the Courts have recognized the effect lower socio-economic status has on minority participation in the political process."); *Major*, 574 F. Supp. at 340-41 (similar).

88. Courts have recognized that "Blacks in contemporary Louisiana have less education, subsist under poorer living conditions and in general occupy a lower socio-economic status than whites" and that these socioeconomic factors "are the legacy of historical discrimination in the areas of education, employment and housing." *Major*, 574 F. Supp. at 341. In addition, Plaintiffs have offered extensive evidence that Black Louisianians suffer socioeconomic hardships stemming from centuries-long racial discrimination, and that those hardships impede their ability to participate in the political process.

89. As discussed above and throughout Dr. Lichtman's and Dr. Burch's expert reports, Louisiana's Black residents experience stark socioeconomic disadvantages across all areas of life: employment, education, poverty, health, housing, and exposure to the criminal justice system. These inequities inhibit their participation in the political process, resulting not only in reduced voter turnout, but also diminished lobbying and campaign contributions.

90. Defendants do not meaningfully dispute that Louisiana's current and historical discrimination has produced striking disparities between the state's Black and white citizens in almost every area that is relevant to quality of life.

91. This Court finds that socioeconomic disparities in areas such as education, income level, and living conditions persist in Louisiana; these disparities arise from past discrimination; and they impair Black Louisianians' participation in the political process. Defendants offered no evidence to dispute this conclusion.

92. This factor thus weighs heavily in Plaintiffs' favor.

18. Senate Factor Six: Both overt and subtle racial appeals are prevalent in Louisiana's political campaigns.

93. This factor examines whether there is a "use of overt or subtle racial appeals in political campaigns" in Louisiana. *Gingles*, 478 U.S. at 45.

94. This Court has previously recognized the use of racial appeals in Louisiana's political campaigns. *See, e.g.*, *Clark v. Roemer*, 777 F. Supp. 445, 458 (M.D. La. 1990) (crediting testimony of Sylvia Cooks, who ran in two judicial elections in Louisiana in 1980s, regarding "the overt and covert racial appeals in both elections by candidates and the public").

95. As discussed above and throughout Dr. Lichtman's and Dr. Burch's expert reports, both overt and subtle racial appeals remain commonplace in Louisiana politics.

96. Defendants do not meaningfully dispute that overt and subtle racial appeals continue to mark the state's political campaigns.

97. This factor thus weighs in Plaintiffs' favor.

19. Senate Factor Seven: Black candidates in Louisiana are underrepresented in office and rarely succeed outside of majority-minority districts.

98. This factor examines "the extent to which members of the minority group have been elected to public office in the jurisdiction." *Gingles*, 478 U.S. at 45. "Where members of the minority group have not been elected to public office, it is of course evidence of vote dilution." *Citizens for a Better Gretna*, 636 F. Supp. at 1120. "The extent to which minority candidates are

elected to public office also contextualizes the degree to which vestiges of discrimination continue to reduce minority participation in the political process." *Veasey*, 830 F.3d at 261.

99. This Court has held that "[t]he lack of black electoral success is a very important factor in determining whether there is vote dilution." *Terrebonne Par. Branch NAACP*, 274 F. Supp. 3d at 444. The Court had noted that "[s]tatewide, blacks have [] been underrepresented in the trial and appellate courts. While the . . . black population comprises about 30.5% of the voting-age population in Louisiana, black people only account for about 17.5% of the judges in Louisiana." *Id.* at 445.

100. Plaintiffs' evidence, including Dr. Lichtman's and Dr. Burch's expert reports, demonstrate that Black Louisianians are underrepresented in statewide elected offices and rarely succeed in local elections outside of majority-Black districts.

101. Defendants do not meaningfully dispute that Black Louisianians are underrepresented in public office.

102. This factor thus weighs in Plaintiffs' favor.

20. Senate Factor Eight: Louisiana has not been responsive to its Black residents.

103. This factor examines "evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group." *Gingles*, 478 U.S. at 45. "The authors of the Senate Report apparently contemplated thatunresponsiveness would be relevant only if the plaintiff chose to make it so, and that although a showing of unresponsiveness might have some probative value[,] a showing of responsiveness would have very little." *United States* v. *Marengo Cnty. Comm'n*, 731 F.2d 1546, 1572 (11th Cir. 1984).

104. As discussed above and throughout Dr. Lichtman's and Dr. Burch's expert reports, the severe socioeconomic inequities borne by Black Louisianians have not been adequately addressed by—and, in some cases, are the direct results of—government action.

105. This factor thus weighs in Plaintiffs' favor.

21. Senate Factor Nine: The justifications for HB 1 are tenuous.

106. This factor examines evidence "that the policy underlying the State's . . . use of the contested practice or structure is tenuous." *Gingles*, 478 U.S. at 45.

107. Defendants have offered no compelling justifications for the Legislature's refusal to draw a second congressional district where Black Louisianians can elect their candidates of choice. Mr. Fairfax's and Mr. Cooper's illustrative plans demonstrate that it is possible to create such a plan while respecting traditional redistricting principles—just as the Voting Rights Act requires.

108. The Legislature's purported discretionary decision to best serve the interests of Black voters through the enacted Congressional District 2 rings hollow given that Black voters are packed into that district far beyond what would be needed for them to elect their preferred candidates.

109. Nor does preservation of communities of interest justify the enacted map given that Congressional District 2 links disparate communities with little regard for the commonalities and differences between voters in the district.

110. Moreover, core retention is not a compelling justification given that it was *not* one of the Legislature's adopted criteria for congressional redistricting and serves only to perpetuate past discriminatory effects.

111. This factor thus weighs in Plaintiffs' favor.

22. Proportionality further supports a finding of vote dilution.

112. In addition to analyzing the Senate Factors, the Court may also consider the extent to which there is a mismatch between the proportion of Louisiana's population that is Black and the proportion of congressional districts in which they have an opportunity to elect their candidates of choice. *See De Grandy*, 512 U.S. at 1000. While the Voting Rights Act does not expressly mandate proportionality, *see* 52 U.S.C. § 10301(b), this inquiry "provides some evidence of whether the political processes leading to nomination or election in the State or political subdivision are not equally open to participation" by a minority group. *LULAC*, 548 U.S. at 438 (cleaned up).

113. Though not dispositive, disproportionality is relevant to the totality-of-circumstances analysis. *See, e.g.*, *Bone Shirt*, 336 F. Supp. 2d at 1049; *Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany*, 281 F. Supp. 2d 436, 455-56 (N.D.N.Y. 2003).

114. The *De Grandy* proportionality inquiry requires the Court to consider the number of enacted congressional districts where Black voters constitute an effective voting majority of the population. *See, e.g.*, *Mo. State Conf. of NAACP*, 894 F.3d at 940 n.12; *Fairley v. Hattiesburg*, 584 F.3d 660, 673 (5th Cir. 2009); *Black Pol. Task Force v. Galvin*, 300 F. Supp. 2d 291, 312 (D. Mass. 2004) (three-judge court).

115. Under the enacted congressional map as drawn by HB 1, only one district has a BVAP that exceeds 50%—less than 17% of Louisiana's six congressional districts.

116. Moreover, under HB 1, only about 31% of Black Louisianians live in majority-Black congressional districts, while 91.5% of white Louisianians live in majority-white districts.

117. Given that Louisiana's statewide population exceeds 33 percent, the present disproportionality in the congressional map weighs in favor of a finding of vote dilution. *See Singleton*, 2022 WL 265001, at *73-74 (assessing comparable proportionality figures,

"consider[ing] the proportionality arguments of the plaintiffs as part and parcel of the totality of the circumstances, and [] draw[ing] the limited and obvious conclusion that this consideration weighs decidedly in favor of the plaintiffs"). This is especially true given that Black Louisianians were significantly responsible for the state's population growth over the past 10 years. *See Bone Shirt*, 336 F. Supp. 2d at 1049 (accepting evidence from Mr. Cooper showing that minority group's population "rapidly increase[ed in] both their absolute numbers and share of the population" and finding that plaintiffs "presented evidence of disproportionality").

* * *

118. Because Plaintiffs have satisfied the three *Gingles* preconditions, and because each of the considerations relevant to the totality-of-circumstances inquiry in this case indicates that the state's new congressional map as drawn by HB 1 dilutes the voting strength of Black Louisianians and denies them an equal opportunity to elect their candidates of choice to the U.S. House of Representatives, Plaintiffs have shown a substantial likelihood of proving that HB 1 violates Section 2 of the Voting Rights Act.

E. Defendants' additional legal arguments lack merit.

119. Defendants raise additional legal arguments, none of which has merit.

23. Plaintiffs have standing to bring their Section 2 claim.

120. "[S]upported allegations that Plaintiffs reside in a reasonably compact area that could support additional [majority-minority districts] sufficiently prove[] standing for a Section 2 claim for vote dilution." *Pope v. County of Albany*, No. 1:11-cv-0736 (LEK/CFH), 2014 WL 316703, at *5 (N.D.N.Y. Jan. 28, 2014).

121. Plaintiffs, as Black Louisianians, have suffered the injury of vote dilution, either because they have been cracked into an area where a Black-performing district should have been

drawn under Section 2 or because they have been packed into a majority-Black district that prevents that required district from being drawn.

122. Defendants' theory that Plaintiffs must represent every district that might be impacted by a remedial districting plan is inconsistent with the standing doctrine in the redistricting context. *See, e.g.*, *United States v. Hays*, 515 U.S. 737, 744-45 (1995) (only voters in racially gerrymandered districts have standing to challenge map); *Fairley v. Patterson*, 493 F.2d 598, 603 (5th Cir. 1974) (voters in underpopulated districts lack standing to challenge malapportionment).

123. Plaintiffs thus have standing to bring their Section 2 claim.

24. Section 2 confers a private right of action.

124. In *Morse v. Republican Party of Virginia*, a majority of the U.S. Supreme Court agreed that "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) (quoting S. Rep. No. 97-417, at 30); *accord id.* at 240 (Breyer, J., concurring) (expressly agreeing with Justice Stevens on this point on behalf of three justices); *see also, e.g.*, *Ga. State Conf. of NAACP v. Georgia*, 269 F. Supp. 3d 1266, 1275 (N.D. Ga. 2017) (three-judge court) (citing *Morse* and concluding that "Section 2 contains an implied private right of action").

125. Where "a precedent of [the Supreme] Court has direct application in a case," courts "should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions"—even if it "appears to rest on reasons rejected in some other line of decisions." *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989).

126. *Morse* has not been overruled, and the Court has given no indication that a majority of justices intends to revisit its conclusion; indeed, it has repeatedly heard private cases brought under Section 2 without questioning this predicate foundation. *See, e.g.*, *Abbott*, 138 S. Ct. at 2331-

32 (2018); *LULAC*, 548 U.S. at 409; *see also Shelby County v. Holder*, 570 U.S. 529, 537 (2013) ("Both the Federal Government *and individuals* have sued to enforce § 2." (emphasis added)); *cf. Brnovich v. DNC*, 141 S. Ct. 2321, 2350 (2021) (Gorsuch, J., concurring) (two justices suggesting that whether or not Section 2 furnishes private right of action is "an open question" without citing *Morse* or any post-*Morse* Section 2 cases).

127. In just the last five months, seven federal judges on three district courts have expressly rejected the argument that Section 2 confers no private right of action. *See Pendergrass v. Raffensperger*, No. 1:21-CV-05339-SCJ, slip op. at 17-20 (N.D. Ga. Jan. 28, 2022); *Singleton*, 2022 WL 265001, at *78-79; *LULAC v. Abbott*, No. EP-21-CV-00259-DCG-JES-JVB, 2021 WL 5762035, at *1 (W.D. Tex. Dec. 3, 2021) (three-judge court); *see also* Statement of Interest of the United States at 1, *LULAC v. Abbott*, No. 3:21-cv-259 (DCG-JES-JVB) (W.D. Tex. Nov. 30, 2021) ("Private plaintiffs can enforce Section 2 as a statutory cause of action[.]").

128. Consistent with this precedent, the Court concludes that Section 2 confers a private right of action.

II. Plaintiffs and other Black Louisianians will suffer irreparable harm absent a preliminary injunction.

129. "Courts routinely deem restrictions on fundamental voting rights irreparable injur[ies]." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *see also, e.g.*, *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (similar); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (similar). That is certainly the case for Section 2 violations. *See, e.g.*, *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1363 (M.D. Ala. 1986) (concluding that Section 2 vote-dilution violation was "clearly" irreparable harm).

130. "Casting a vote has no monetary value. It is nothing other than the opportunity to participate in the collective decisionmaking of a democratic society and to add one's own

perspective to that of his or her fellow citizens." *Jones v. Governor of Fla.*, 950 F.3d 795, 828-29 (11th Cir. 2020). Accordingly, "[t]he denial of the opportunity to cast a vote that a person may otherwise be entitled to cast—even once—is an irreparable harm." *Id.*

131. The Section 2 violation found here will irreparably damage Plaintiffs' right to participate in the political process. Accordingly, the Court finds that, absent preliminary injunctive relief, Plaintiffs will suffer irreparable harm if they are forced to vote under Louisiana's unlawful congressional plan.

III. The balance of equities and the public interest favor injunctive relief.

132. The balance of the equities and the public interest "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

133. Vindicating voting rights is indisputably in the public interest. *See, e.g.*, *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005). "Ultimately," the Court's "conclusion that the plaintiffs have a substantial likelihood of success on the merits disposes of this question in short order. The public, of course, has every interest in ensuring that their peers who are eligible to vote are able to do so in every election." *Jones*, 950 F.3d at 831; *see also Husted*, 697 F.3d at 437 ("The public interest . . . favors permitting as many qualified voters to vote as possible."); *Ga. State Conf. of NAACP*, 118 F. Supp. 3d at 1348-49 ("[T]he public interest is best served by ensuring not simply that more voters have a chance to vote but ensuring that all citizens . . . have an equal opportunity to elect the representatives of their choice.").

134. Moreover, "[i]t is clear that it would not be equitable or in the public's interest to allow the state . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (quoting *United States v. Arizona*, 641 F.3d 339, 366 (9th Cir. 2011)); *see also Bank One, Utah v. Guttau*, 190 F.3d 844, 848 (8th Cir. 1999) ("[T]he public interest will

perforce be served by enjoining the enforcement of the invalid provisions of state law."). Accordingly, the public interest would most assuredly be served by enjoining implementation of a congressional districting plan that violates Section 2

135. The Court further concludes, based on the findings of fact above, that implementation of a remedial congressional map would be feasible in advance of the 2022 midterm elections. Any "inconvenience" or administrative cost the State and candidates might bear in remedying Louisiana's unlawful congressional plan thus "does not rise to the level of a significant sovereign intrusion" to tilt the equities against vindicating Plaintiffs' voting rights. *Covington v. North Carolina*, 270 F. Supp. 3d 881, 895 (M.D.N.C. 2017) (three-judge court).

136. Under *Purcell v. Gonzalez*, federal courts should avoid last-minute changes to election rules that "result in voter confusion and consequent incentive to remain away from the polls." 549 U.S. 1, 4-5 (2006) (per curiam). Here, the primary election is nearly six months away, and there is no evidence in the record that implementing a new congressional map would cause voter confusion—let alone undue hardship for the State or candidates. Therefore, *Purcell* does not foreclose preliminary injunctive relief. *See, e.g.*, *Self Advoc. Sols. N.D.* v. *Jaeger*, 464 F. Supp. 3d 1039, 1055 (D.N.D. 2020) (granting preliminary injunctive relief where *Purcell* concerns were not present and there was "the countervailing threat of the deprivation of the fundamental right to vote"); *Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195, 221-22 (W.D. Tex. 2020) (similar).

137. Just recently, on March 23, 2022, the U.S. Supreme Court summarily reversed a judgment of the Wisconsin Supreme Court approving maps for that state's 2022 legislative elections. *See Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1248 (2022) (per curiam). The Court concluded that its ruling "g[ave] the court sufficient time to adopt maps

consistent with the timetable for Wisconsin's August 9th primary election," *id.*—approximately four-and-a-half months later.

138. Federal courts that have invalidated congressional districting plans during election years have given the corresponding state legislatures two weeks to enact new plans. *See Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (three-judge court); *Common Cause v. Rucho*, 279 F. Supp. 3d 587, 691 (M.D.N.C.) (three-judge court), *rev'd on other grounds*, 138 S. Ct. 823 (2018). State courts have required new maps to be drawn in even less time. *See, e.g.*, *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, Nos. 2021-1193, 2021-1198, 2021-1210, 2022 WL 110261, at *28 (Ohio Jan. 12, 2022) (ordering new state legislative plans to be drawn within 10 days).

139. To the extent the State needs more time to implement a remedial plan, the Court may "extend the time limitations imposed by state law" related to its election deadlines. *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 201 n.11 (1972).

IV. Any remedial plan must contain an additional congressional district in which Black voters have a demonstrable opportunity to elect their candidates of choice.

140. Having concluded that Louisiana's enacted congressional map is substantially likely to violate Section 2 and that a preliminary injunction is therefore appropriate under the circumstances, the Court turns to the question of what a proper remedial plan must contain.

141. Where, as here, Plaintiffs have established a Section 2 violation based on the failure to create an additional district in which Black voters have an opportunity to elect their preferred candidates, a plan containing an additional congressional district in which Black voters have a demonstrable opportunity to elect their preferred candidates would remedy their injury.

PROPOSED ORDER GRANTING INJUNCTIVE RELIEF

1. Because all four of the preliminary injunction factors support relief, the Court GRANTS Plaintiffs' motions for preliminary injunction.

2. The Court ENJOINS Defendant, as well as his agents and successors in office, from using the enacted congressional map in any election, including the 2022 primary and general elections.

3. Having found it substantially likely that the enacted congressional map violates Section 2 of the Voting Rights Act and that an injunction is warranted, the Court now addresses the appropriate remedy.

4. The Court is conscious of the powerful concerns for comity involved in interfering with the State's legislative responsibilities. As the U.S. Supreme Court has repeatedly recognized, "redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt." *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978) (plurality opinion). As such, it is "appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet" the requirements of Voting Rights Act "by adopting a substitute measure rather than for the federal court to devise . . . its own plan." *Id.* at 540.

5. The Court also recognizes that Plaintiffs and other Black Louisianians whose voting rights have been injured by the violation of Section 2 of the Voting Rights Act have suffered significant harm. Those citizens are entitled to vote as soon as possible for their representatives under a lawful districting plan. Therefore, the Court will require that a new congressional plan be drawn forthwith to remedy the Section 2 violation.

6. In accordance with well-established precedent, the Court allows the Legislature until final adjournment of its regular session on Monday, June 6, 2022, to adopt a remedial congressional plan. The Court retains jurisdiction to determine whether any new congressional

plan adopted by the Legislature remedies the Section 2 violation by incorporating an additional district in which Black voters have a demonstrable opportunity to elect their candidates of choice.

7. In the event that the Legislature is unable or unwilling to enact a remedial plan that satisfies the requirement set forth above before final adjournment of its regular session, this Court will proceed to draw or adopt a remedial plan for use during the 2022 primary and general elections.

8. Because time is of the essence, the Court will undertake a concurrent process to ensure that a remedial congressional map is timely adopted. To that end, the Court will hold a status conference within three business days of this order to discuss the remedial process.* Additionally, the Court orders the parties to submit five days after entry of this order, by 11:59 p.m. CT, proposed remedial maps in either shapefile or block-equivalency file format with accompanying memoranda in support. The parties may submit memoranda in response to the map submissions due five days thereafter, also by 11:59 p.m. CT.

* Defendant is further ordered to inform the Court at the status conference whether any alterations to the election calendar are needed in order to implement a remedial congressional map.

Dated: May 20, 2022

Respectfully submitted,

By */s/ Darrel J. Papillion*
Darrel J. Papillion (Bar Roll No. 23243)
Renee C. Crasto (Bar Roll No. 31657)
Jennifer Wise Moroux (Bar Roll No. 31368)
WALTERS, PAPILLION,
THOMAS, CULLENS, LLC
12345 Perkins Road, Building One
Baton Rouge, Louisiana 70810
Phone: (225) 236-3636
Fax: (225) 236-3650
Email: papillion@lawbr.net
Email: crasto@lawbr.net
Email: jmoroux@lawbr.net

Abha Khanna*
Jonathan P. Hawley*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
Email: akhanna@elias.law
Email: jhawley@elias.law

Lalitha D. Madduri*
Olivia N. Sedwick*
Jacob D. Shelly*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
Email: lmadduri@elias.law
Email: osedwick@elias.law
Email: jshelly@elias.law

Counsel for the Galmon *Plaintiffs*

*Admitted *pro hac vice*

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

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

R. Jared Evans (admitted *pro hac vice*)
Sara Rohani (admitted *pro hac vice*)†
NAACP Legal Defense and Educational Fund, Inc.
700 14th Street N.W. Ste. 600
Washington, DC 20005
Tel: (202) 682-1300
jevans@naacpldf.org
srohani@naacpldf.org

Robert A. Atkins (admitted *pro hac vice*)
Yahonnes Cleary (admitted *pro hac vice*)
Jonathan H. Hurwitz (admitted *pro hac vice*)
Daniel S. Sinnreich (admitted *pro hac vice*)
Amitav Chakraborty (admitted *pro hac vice*)
Adam P. Savitt (admitted *pro hac vice*)
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue Of The Americas, New York, NY 10019
Tel.: (212) 373-3000
Fax: (212) 757-3990
ratkins@paulweiss.com
ycleary@paulweiss.com
jhurwitz@paulweiss.com
dsinnreich@paulweiss.com
achakraborty@paulweiss.com
asavitt@paulweiss.com

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

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

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

Sarah Brannon (admitted *pro hac vice*)
American Civil Liberties Union Foundation
915 15th St., NW
Washington, DC 20005
sbrannon@aclu.org

† Admitted in California only. Practice limited to matters in United States federal courts.

Counsel for the Robinson *Plaintiffs*

/s/ Stephen M. Irving
Stephen M. Irving (7170) T.A.
Steve Irving, LLC
111 Founders Drive, Suite 700 Baton Rouge, LA 70810-8959
Telephone: (225) 752-2688
Facsimile: (225) 752-2663
Email: steve@steveirvingllc.com - AND

ERNEST L. JOHNSON #07290
Attorney at Law
3313 Government Street
Baton Rouge, LA 70806
(225) 413-3219
ernestjohnson@lacapfund.com

Counsel for Intervenor-Plaintiff
Louisiana Legislative Black Caucus

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been filed electronically with the Clerk of Court using the CM/ECF filing system. Notice of this filing will be sent to all counsel of record via operation of the Court's electronic filing system.

Baton Rouge, Louisiana, this 20th day of May, 2022.

s/ *Darrel J. Papillion*
Darrel J. Papillion